



HM Treasury

Overseas Framework: Call for Evidence

December 2020

Overseas Framework: Call for Evidence



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Foreword

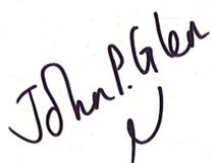
The UK is home to one of the largest financial services centres in the world, employing more than 1 million people, and adding more than £130bn of value to the UK economy in 2018. We have always been, and continue to be, vocal supporters of open, global financial markets underpinned by the highest standards of regulation. As we leave the European Union the government is looking to the future with those objectives in mind. This includes looking at both our overall regulatory framework, and individual components of it, to ensure it continues to operate effectively, providing a stable and predictable environment for businesses.

On 9 November the Chancellor announced this Call for Evidence, which is designed to gather information to help us understand how our current overseas framework supports our position as a global financial centre. We want to ensure our legislative and regulatory regimes for overseas access achieve the goal of attracting liquidity and activity to the UK while supporting financial stability and openness in financial markets.

The areas we are particularly interested to gather information on through this exercise are our related but distinct regimes, including the overseas persons exclusion (OPE), the Financial Promotion Order (FPO), recognised overseas investment exchanges (ROIE), overseas long-term insurers, and investment services equivalence under the Markets in Financial Instruments Regulation (MiFIR).

This is very much an open information gathering and learning exercise – taking stock of our framework and its operation. We really want to hear from stakeholders how the regimes work in practice and how market participants navigate them and might think about using them in future. This will help us test how the regimes measure up against our principles, and then consider next steps, which we want to do in partnership with stakeholders.

I invite all interested stakeholders to use this opportunity to share their views on the issues set out in this Call for Evidence.

A handwritten signature in black ink that reads "John P. Glen". The signature is written in a cursive style with a large initial 'J' and a stylized 'G'.

John Glen, Economic Secretary to the Treasury

Chapter 1

Introduction and overarching principles

Introduction

- 1.1 The UK is a global centre for financial services. This is supported by many contributing factors including a comprehensive financial and professional services hub, globally renowned legal expertise, a favourable time zone for interacting and trading with East and West, and a truly international investor base. Deep and liquid capital markets are at the heart of the UK's openness and prosperity as a global financial centre. This openness attracts international businesses looking to raise finance; enables investors and asset managers to access the widest pool of investments; allows consumers to access a range of financial products; and provides an essential service to UK businesses wanting to access finance to grow and to manage risk.
- 1.2 The government continues to believe that open markets are vital to support economic growth and wants to continue to support the UK's position as a global financial centre. To do this well the sector must be supported by effective, proportionate regulation and high standards. To continue to attract investment and liquidity to the UK, we are now examining our framework for financial services firms based overseas.
- 1.3 Leaving the EU provides an important opportunity to look at our overseas framework, and the regimes within it, to ensure that they continue to work effectively. Our full framework for overseas access to UK markets includes many elements. Having developed over time, the regimes within the framework allow firms to access UK markets in different ways varying across sectors, types of activity, the nature of the approach, and types of consumer. In certain cases, access relies on arrangements determined both on a jurisdictional and firm basis – for example, as permitted through equivalence and recognition regimes. Others, such as the overseas persons exclusion provide for access by overseas firms without requiring any form of authorisation, recognition or registration. The overseas branching policies operated by the regulators – the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) – are other aspects of the framework.
- 1.4 There are a number of regimes within our framework that we are particularly interested in feedback on, including but not limited to:
 - the overseas persons exclusion (OPE);
 - investment services equivalence under Title VIII of the Markets in Financial Instruments Regulation (MiFIR);
 - recognised overseas investment exchanges (ROIEs);

- the Financial Promotion Order (FPO) in general, and specifically in relation to the distribution of certain overseas long-term insurance products in the UK.
- 1.5 There are some overlaps between the activities covered by these regimes, and there may be scope for improving consistency and to make the overall framework more transparent and easier to navigate.
- 1.6 We are launching this Call for Evidence to start a conversation with stakeholders about how we best move forward as an independent nation and a global centre for financial services.

Overarching principles

- 1.7 Any changes to the framework for overseas firms and activities would be considered in reference to the principles that guide our approach to cross-border financial services. Our overseas access framework should:
- facilitate the benefits of maintaining an open and globally integrated financial system, enabling international financial services business by reducing barriers and frictions where practicable;
 - consist of robust, high-quality and proportionate regulation, guided by and consistent with international standards;
 - ensure resilient and safe financial markets and firms in a way that supports financial stability, market integrity and consumer protection;
 - support the transition to sustainable finance;
 - be transparent and predictable;
 - provide a stable and reliable arrangement for cross-border market access;
 - enable effective cooperation with international partners.
- 1.8 This Call for Evidence is designed as an information gathering exercise about how the regimes work in practice and how market participants navigate them and might think about using them in future. We will use this information to assess how the regimes measure up against our principles and fit within our evolving regulatory framework and communicate findings and next steps to all stakeholders including UK consumers, UK firms, and overseas firms.

Chapter 2

Our current framework for overseas firms

- 2.1 The evolution of our current framework spans several decades, across a range of governments, institutions and constitutional arrangements. Provisions permitting access for financial services activity by overseas firms include a mixture of regimes excluding certain activities from the regulatory perimeter and specific jurisdictional arrangements where close supervisory cooperation between the UK and the 'home regulator' is required.
- 2.2 In order to establish whether they can carry out a particular activity, overseas firms must first consider whether their activity is a regulated activity carried on in the UK and requires regulatory permission, or whether it involves communicating a financial promotion which needs to be approved or made by an authorised person.
- 2.3 Beyond that there are several considerations, including whether there are any other applicable exclusions or exemptions which might apply, and then whether there are any jurisdictional-specific mutual recognition agreements or equivalence decisions, or entity level recognition, branching arrangements, or temporary permissions regimes. We are currently taking steps to update aspects of the framework via the Financial Services Bill¹ currently being considered by Parliament by introducing a new regime for overseas funds, access from Gibraltar and updating the equivalence regime for cross-border investment service in MiFIR. The FCA has also recently consulted on its approach for international firms seeking to operate through a branch in the UK².
- 2.4 While there are many elements, we have identified some specific aspects of the framework on which we are particularly interested in understanding views through this Call for Evidence: the OPE, MiFIR Title VIII, ROIEs, the FPO and the distribution of certain overseas long-term insurance products. This is because there are some overlaps between the activities covered by these elements, and there may be scope to make the overall framework more transparent, consistent (where delivered through separate regimes) and easier to navigate.

Financial services regulation in the United Kingdom

- 2.5 The Financial Services and Markets Act 2000 (FSMA) sits at the centre of the UK's regulatory framework. It sets the roles and responsibilities of

¹ <https://publications.parliament.uk/pa/bills/cbill/58-01/0200/200200.pdf>

² <https://www.fca.org.uk/publication/consultation/cp-20-20.pdf>

Parliament, government and the financial services regulators. It also establishes that HM Treasury sets the 'regulatory perimeter' through secondary legislation, specifying which financial activities and investments should be regulated and the circumstances in which regulation should apply. This is supplemented by further rules and guidance from UK regulators. The overall financial services framework and rules determining access of overseas firms are also, in part, derived from legislation agreed through the UK's past membership of the EU.

- 2.6 Under the general prohibition in section 19 of FSMA, a person (which includes a company or a partnership) may not carry on a regulated activity in the UK, or purport to do so, unless they are either an authorised person or an exempt person. What is considered as a regulated activity is specified in the Regulated Activities Order (RAO). Whether or not an activity is regarded as being carried on in the UK can depend on many factors, set out in section 418 of FSMA and PERG 2.4. It can depend on consideration of the location of both the client and the provider, and the type and location of the activity being undertaken. Broadly, an 'authorised person' is someone with regulatory authorisation from the FCA or PRA or that is otherwise authorised under FSMA.
- 2.7 Overseas firms who do not conduct business from a permanent place of business in the UK may consider whether they need this type of regulatory permission, depending on whether the activity would be treated as carried on in the UK by the Act, or if they qualify for some form of exemption or exclusion under the RAO. We have explained some of the options that are currently available for overseas firms below. However, views are sought on all aspects of the UK regulatory perimeter as it applies to overseas firms and their subsidiaries, including the intragroup exemption or other RAO exclusions or exemptions which are relevant to overseas firms' business models. The next section provides a brief overview of the key regimes we are gathering views on through this exercise.

The overseas persons exclusion

- 2.8 The overseas persons exclusion (OPE) is an exclusion from the authorisation requirement which applies to 'overseas persons' under article 72 of the RAO. The OPE applies to a range of regulated activities, including dealing in investments as principal, arranging deals in investments³, and agreeing to do

³ The exclusion in article 72 of RAO applies, in specified circumstances, to the following regulated activities:

- i. Dealing in investments as principal or agent
- ii. Arranging deals in investments
- iii. Operating a multilateral trading facility (MTF) or organised trading facility (OTF)
- iv. Advising on investments
- v. Arranging, entering into or administering regulated mortgage contracts
- vi. Arranging, entering into and administering regulated home reversion and home purchase plans, and sale and rent back agreements

those activities⁴. It was introduced in 1986 when UK regulation of investment services was put on a clearer statutory footing.

- 2.9 An ‘overseas person’ is defined as a legal person who carries on certain regulated activities (including an activity that would be regulated but for the exclusion in article 72 of the RAO) but who does not do so, or offer to do so, from a permanent place of business in the UK. Unlike the other regimes discussed in the paper the ability to use the OPE is not linked to the standards of regulation applied in the home state, or any requirement for firms to be registered or report on the business they undertake.
- 2.10 Where the exclusion applies, it is generally available where one of the following two conditions is satisfied:
- the regulated activity is done ‘with or through’ an authorised or exempt person⁵. Entering into a transaction ‘with or through’ an authorised or exempt person can involve entering into a transaction ‘with’ an authorised or exempt person as a counterparty, or ‘through’ an authorised or exempt person as an agent or arranger.
 - the regulated activity is carried on as a result of a ‘legitimate approach’, which is an approach to, by, or on behalf of an overseas person that does not contravene section 21 of FSMA (the restriction on financial promotions).
- 2.11 Over time, regulatory guidance on how the OPE may be used has been published by HM Treasury and in the FCA’s perimeter guidance manual. However, as this is a complex regime, we understand that firms generally seek legal advice on how to use the OPE.
- 2.12 For overseas firms with a subsidiary in the UK, the subsidiary is a separate legal entity from the parent company, or any other entities within the group. Under these circumstances, the use of the OPE by the parent, or another group entity, is permitted.
- 2.13 The RAO provides that if an equivalence determination is made under MiFIR Title VIII (see below), this route would substitute for the OPE for the exercise of those services which overlap. Firms may still rely on the OPE for other activities and on other exclusions in the RAO.

⁴ The exclusion in Article 72 of RAO also applies, in specified circumstances, when agreeing to carry on any of the following regulated activities:

- i. Arranging deals in investments
- ii. Managing investments
- iii. Assisting in the administration and performance of a contract of insurance
- iv. Safeguarding and administering investments
- v. Sending dematerialised instructions

⁵ The definition of “exempt person” includes appointed representatives, recognised investment exchanges and clearing houses. It also includes certain non-governmental bodies.

UK Markets in Financial Instruments Regulation (MiFIR) – Title VIII

- 2.14 The Markets in Financial Instruments Directive II (MiFID II, and including MiFIR) is the EU legislation that regulates firms who provide services to clients and markets linked to ‘financial instruments’ (shares, bonds, units in collective investment schemes and derivatives), and the trading venues where those instruments are traded. It brought in many reforms to address the risks from the 2008 financial crisis and also included a new third country regime that would allow access to all EU member states.
- 2.15 The UK onshored the EU third-country equivalence regime for investment firms in MiFIR Title VIII. The UK and the EU have not yet made a positive determination under MiFIR Title VIII.
- 2.16 The Title VIII regime enables overseas firms to perform investment activities and provide investment services to eligible counterparties and per se professional clients (which are all defined terms under MiFID II) on the basis of registration with the FCA, rather than authorisation in the UK. Article 46 of MiFIR contains the relevant criteria and sets out the relevant pre-conditions that must be met before an overseas firm can provide cross-border services to clients in the UK. These pre-conditions include:
- an equivalence determination made under Article 47 of MiFIR: HM Treasury will need to assess that the overseas jurisdiction has equivalent legally binding prudential and business conduct requirements, and issue a positive determination.
 - that the overseas firm is authorised in its home jurisdiction and subject to effective supervision and enforcement.
 - that the relevant competent authorities have established cooperation agreements.
 - that the overseas firm registers with the FCA.
- 2.17 The investment services and activities included in these provisions are:
- reception and transmission of orders in relation to one or more financial instruments;
 - execution of orders on behalf of clients;
 - dealing on own account;
 - portfolio management;
 - investment advice;
 - underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;
 - placing of financial instrument without a firm commitment basis;
 - operation of a Multilateral Trading Facility (MTF);
 - operation of an Organised Trading Facility (OTF).

- 2.18 The FCA has the power to withdraw a firm's registration on 30 days' notice, at which point the overseas firm will no longer be able to provide services or perform activities in the UK. Title VIII sets out the conditions for withdrawal of a firm's registration. These are that there is well documented evidence indicating that the firm is acting in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of markets, or that it has seriously infringed the provisions applicable to it in the third country on the basis of which market access was granted.
- 2.19 The Guidance Document⁶ for the UK's Equivalence Framework for Financial Services explains that, if necessary, withdrawal of equivalence from a jurisdiction may occur if the UK determines that the overseas jurisdiction no longer delivers equivalent outcomes and both sides have been unable to agree a solution to satisfactorily address the concerns raised. In this scenario, HM Treasury will seek to ensure that withdrawal of equivalence is undertaken in line with the principles of transparency, predictability and appropriate engagement with the overseas jurisdiction. We will also seek to avoid market disruption. This is a unified approach across all the UK's statutory equivalence regimes, though what it specifically means in practical terms in the context of different forms of equivalence will vary.
- 2.20 Title VIII is interlinked with the OPE. There is considerable overlap between the activities covered by Title VIII and the OPE. However, the different conditions mean they are not fully substitutable. If the UK were to make a positive equivalence determination under MiFIR Title VIII provisions, after a three-year period the OPE would not be available for firms undertaking those overlapping activities into the UK from the relevant jurisdiction.
- 2.21 The UK is currently updating the Title VIII provisions through the Financial Services Bill. As well as its power to withdraw a firm's registration the FCA will have additional powers to impose temporary restrictions or prohibitions on overseas firms registered under the Title VIII regime which do not comply or cooperate with the FCA's direct powers over it.

Recognised overseas investment exchanges

- 2.22 The UK regime allows for overseas exchanges to be recognised, and thereby exempt from the need to be authorised for any activities which form part of the exchange's business as an investment exchange. These exchanges are referred to as ROIEs and are granted this status through a recognition order by the FCA deriving from section 295 of FSMA. This regime was originally introduced in the 1986 Financial Services Act.
- 2.23 This regime is different from the OPE, primarily because of the level of supervisory control and visibility which it applies. The recognition process requires the overseas investment exchange to submit an application to the FCA and, if recognised, to comply with the FCA's ongoing reporting requirements.

⁶ <https://www.gov.uk/government/publications/guidance-document-for-the-uks-equivalence-framework-for-financial-services>

- 2.24 Having the status of an ROIE facilitates the participation of overseas investment exchanges in UK markets. One of the requirements to be met for an overseas exchange to be recognised is that investors are afforded equivalent protection to that they would enjoy if the exchange complied with UK laws and regulations. As a result of this condition having to be met, the regime reduces the involvement which the FCA need to have in the day-to-day affairs of an overseas recognised exchange because they are able to rely substantially on the supervisory and regulatory arrangements in the country where the exchange's head office is situated.
- 2.25 Moreover, the FCA has broadly the same supervisory powers in relation to ROIEs as it does in relation to recognised investment exchanges, including the ability to issue directions and to withdraw recognition, if the ROIE is failing to comply with its obligations.
- 2.26 The FCA Financial Services Register includes the full list of 22 overseas exchanges who have been granted ROIE status.
- 2.27 There is also an overlap with the ROIE regime and the OPE, because the OPE covers a number of regulated activities which an overseas exchange could be carrying on in the UK. Market operators who do not maintain a permanent place of business in the UK may be able to rely on the OPE rather than the ROIE, hence not requiring any regulatory recognition.

Financial Promotion Order (FPO)

- 2.28 A financial promotion is any invitation or inducement to engage in investment activity. At a very high level, the financial promotions restriction (section 21 of FSMA) sets out that a financial promotion must be made or approved by an authorised person, unless the communication falls under one of the exemptions listed in the FPO. Accordingly, this allows unauthorised persons to make financial promotions, where the content is approved by an authorised person.
- 2.29 Where an authorised person is approving the promotion, they will have to ensure it meets a number of FCA rules (set out in the FCA's Conduct of Business Sourcebook (COBS) 4) which are designed to protect investors. This includes the requirement that the promotion is 'clear, fair and not misleading'. If the unauthorised person asks an authorised person to make or approve the communication, the authorised person will be subject to a number of conduct rules designed to protect investors when making or approving the communication.
- 2.30 Here, an 'authorised person' is someone with regulatory authorisation from the FCA or PRA or that is otherwise authorised under FSMA.
- 2.31 The key exemptions for overseas firms include:
- communications made to 'investment professionals'. This includes authorised persons, exempt persons, governmental/international organisations, and other persons for whom it is reasonable to expect them to carry out the relevant activity on a regular basis.

- communications relating to deposit-taking (other than structured deposits), so long as any written communication is accompanied by information on the deposit-taker's regulatory status in its home state and any home state dispute resolution and deposit-protection scheme. A follow up communication made within a year of such a communication is also permitted.
- communications regarding securities and derivatives business which are made only to 'high net worth' companies, unincorporated associations, and trusts.

2.32 This list is not exhaustive. There are also exemptions for customers who were previously based overseas, and all the exemptions to the FPO are subject to specific conditions. There is no exemption which allows an overseas firm to communicate a financial promotion in a general way.

2.33 The FPO links in with the OPE, as one of the bases on which the OPE applies is when the overseas person deals with the UK person through a 'legitimate approach'. A 'legitimate approach' is where the overseas person is approached by a UK person and that approach has not been solicited, or where the overseas person solicits the UK person in a way which does not contravene the financial promotions restriction (e.g. by relying on an exemption in the FPO or have the financial promotion approved by a UK authorised person).

FPO: Overseas Insurance

2.34 There are a number of exemptions in the FPO relating to insurance distribution. However, article 10 of the FPO provides that the exemptions are only available in relation to certain contracts of long-term insurance with an insurer who is:

- authorised in the UK as an insurer, or exempt from such authorisation;
- authorised as an insurer in an EEA state, the Bailiwick of Guernsey, the Isle of Man, the Commonwealth of Pennsylvania, the State of Iowa, and the Bailiwick of Jersey.

2.35 From the end of the transition period, this exemption will no longer apply in respect of insurers authorised in EEA states (unless they are also authorised as insurers in the UK) and thus firms will no longer be able to use this exemption to issue financial promotions relating to certain contracts of long-term insurance with such insurers, unless they are otherwise authorised or exempt.

Chapter 3

Questions in the Call for Evidence

- 3.1 We want to consider whether our framework is delivering on our objective of openness, consistent with our principles (including ensuring transparency) and supporting financial stability. In considering how best to move forward we want to be fully informed about how effective stakeholders find the current regimes, including by gathering more information on how they use different aspects of it. We encourage responses from firms currently using the aspects of our framework listed in this paper; firms who have considered using an aspect of our framework but ultimately decided not to; or firms who are no longer using our framework. We are also keen to understand how firms' use of our overseas framework may change now the UK has left the European Union. We seek views from legal professionals advising on its operation; industry groups; consumer groups and other interested parties. Please answer as many questions as appropriate, and provide any additional information, views and comments as you choose.
- 3.2 We are keen to obtain responses both from UK firms and from overseas firms who use and benefit from aspects of the overseas framework – for example, from UK firms with or through which such firms undertake business under the OPE, or from overseas firms which rely on the OPE to undertake business in the UK.

For all firms

- 1 Please describe your business model, entities, and the types of financial services activity your firm (or group, where relevant) undertakes in relation to the UK, or will undertake after the end of the transition period.
- 2 Do you think that the route of access to the UK market provided for by the overseas framework adequately advances the principles set out in paragraph 1.7?
- 3 Are there any specific risks that the current regimes for overseas firms do not adequately address?
- 4 Are there specific complexities around the regime you think need to be addressed?
- 5 Please could you comment on the overlap between article 47 of MiFIR and the OPE. If an article 47 decision was issued, how may this affect your decisions to undertake activity in the UK?

- 6 Are there national exclusions/exemptions in other jurisdictions that provide benefits comparable to those provided by the UK's regime?
- 7 What changes do you think should be made to the operation of the OPE, and what would be the advantages and disadvantages?
- 8 Which aspects of the overseas framework are relevant to the conduct of your business, how easy they are to use and how well do they suit the nature of your business?
- 9 Please comment on your current and future use of the OPE, ROIE and FPO exemptions specifically, as well as any other specific regimes under the access framework, setting out in particular:
 - a) Your primary location.
 - b) The type of client/counterparty you interact with in the UK.
 - c) The type of activity conducted and through which regime (please be as specific as possible).
 - d) Whether you have regulatory permission in your home state.
 - e) Whether, and if so how, your use of these regimes enables you to manage business between different group entities, for example for risk management, or is used in conjunction with other group entities or structures as an alternative means of access or to expand the range of services that may be offered?
 - f) How your use of these regimes may change in the future?

Specifically, if the OPE is used:

- g) Volume of business of different types connected to the OPE per annum.
- h) Benefits accruing from the OPE, including capital treatment or access to clients.
- i) How important is the existence of the OPE for your current business model, booking arrangements and your use of the UK as a risk management hub? Please explain its advantages and any disadvantages.
- j) The type of approach used. Please be specific about using 'with or through' or 'legitimate approach'. If using a 'legitimate approach', please also be specific about the legal basis on which you rely not to breach the financial promotion regime.
- k) Whether you could rely on different approaches to the one your firm uses. If so, which approaches would be available to you? This includes not only relying on 'with or through' instead of a 'legitimate approach', as well as different legal bases for making a legitimate approach.
- l) If there are several different approaches available to you, could you comment on why you have chosen the approach you rely on?

- m) Does the OPE raise any practical challenges for you, either generally or more specifically in terms of ensuring your firm's compliance with it from a systems and controls point of view?
- n) Are there specific aspects of the OPE which give rise to uncertainty, for example over its application in some circumstances, and how might these be remedied?
- o) To what extent is your use of the OPE driven by tax residence considerations and/or any other non-regulatory considerations?
- p) If you are an overseas firm, do you use the OPE as a basis for undertaking business with other entities within your group, and if so, how do you use it?
- q) If you are a firm authorised in the UK, what business benefits do you get from dealing directly with overseas firms which rely on the OPE?
- r) How important is the intragroup exemption for your current business model, booking arrangements and your use of the UK as a risk management hub? Please explain its advantages and any disadvantages

For insurers and insurance intermediaries

- 10 Should the list of jurisdictions in regulation 10 of, and Schedule 2 to, the FPO be amended?
- 11 Should the insurance products to which FPO exemptions apply be amended?

For trading venues

- 12 Do you think the routes of access to the UK market for all types of trading venue adequately advance the principles set out in paragraph 1.7?
- 13 Are there any specific risks that the current regimes of market access for trading venues do not adequately address?
- 14 Are there specific complexities around the regime of market access for trading venues that you think need addressing?
- 15 Do you think that it is appropriate to include investment firm MTFs and OTFs in a general market access regime for the cross-border provision of investment services by investment firms, or should they be part of a separate regime for trading venues?
- 16 Do you think that the current scope of the ROIE regime is appropriate from a market participant's point of view?
- 17 Does the ROIE regime strike the right balance between regulatory oversight by the FCA and reliance on substituted compliance?

- 18 Are there any other aspects of the ROIE regime that you think need to be changed in the light of market developments and the evolution of trading technologies?
- 19 There is an overlap between the ROIE regime and the OPE. Firms are invited to comment on their choice of access route and the reasons why they chose it.

Chapter 4

How to respond

This Call for Evidence will remain open for 12 weeks and will close on 11 March 2021. The government is seeking views through this Call for Evidence to develop evidence to feed into HM Treasury's longer-term policy and legislative work. Following the Call for Evidence, the government will provide a summary of responses and will explain next steps.

Who should respond?

A range of groups will be interested in the questions and evidence presented. Responses are welcome from all stakeholders, including:

- Law firms which advise on the framework
- Firms which do business via the framework
- Industry bodies
- Businesses
- Consumer groups

When and how to submit responses

This Call for Evidence will remain open for 12 weeks and will close on 11 March 2021.

Please submit your responses to:

overseasframeworkcfe@hmtreasury.gov.uk

Address:

Overseas Framework Call for Evidence
International Policy & Partnerships Team
HM Treasury
1 Horse Guards Road
SW1A 2HQ

Annex A

Call for Evidence - Processing of Personal Data

A.1 This notice sets out how HM Treasury will use your personal data for the purposes of the Overseas Framework Call for Evidence and explains your rights under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

Your data (Data Subject Categories)

A.2 The personal information relates to you as either a member of the public, parliamentarians, and representatives of organisations or companies.

The data we collect (Data Categories)

A.3 Information may include your name, address, email address, job title, and employer of the correspondent, as well as your opinions. It is possible that you will volunteer additional identifying information about yourself or third parties.

Legal basis of processing

A.4 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 Call for Evidence the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop good effective government policies.

Special categories data

A.5 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

A.6 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.

- A.7 This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop good effective policies.

Purpose

- A.8 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

- A.9 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).
- A.10 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.
- A.11 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.
- A.12 Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.
- A.13 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>.
- A.14 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)

- A.15 Personal information in responses to a Call for Evidence will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.
- A.16 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)

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

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

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

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

Contact Details

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

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

A.17 privacy@hmtreasury.gov.uk

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