

PART I – Chapter 8
REVIEW VERSION – BOARD APPROVED 30 JANUARY 2020

CHAPTER 8

RECORD KEEPING

<p>➤ Relevant law/regulation</p> <ul style="list-style-type: none"> ▪ Data Protection Act 1998 ▪ Regulations 18, 19 and 39-41 ▪ SYSC Chapter 3
<p>➤ Core obligations</p> <ul style="list-style-type: none"> ▪ Firms must retain <u>for five years after the end of the customer relationship or five years after the completion of an occasional transaction:</u> <ul style="list-style-type: none"> • copies of, or references to, the evidence they obtained of a customer’s identity, for five years after the end of the customer relationship • details of customer transactions for five years from the date of the transaction ▪ Firms should retain: <ul style="list-style-type: none"> • details of actions taken in respect of internal and external suspicion reports • details of information considered by the nominated officer in respect of an internal report where no external report is made ▪ Firms must delete any personal data relating to CDD and client transactions in accordance with Regulation 40
<p>➤ Actions required, to be kept under regular review</p> <ul style="list-style-type: none"> ▪ Firms should maintain appropriate systems for retaining records ▪ Firms should maintain appropriate systems for making records available when required, within the specified timescales

General legal and regulatory requirements

Regulation 19(1)(a)	8.1	This chapter provides guidance on appropriate record keeping procedures that will meet a firm’s obligations in respect of the prevention of money laundering and terrorist financing. There are general obligations on firms to maintain appropriate records and controls more widely in relation to their business; this guidance is not intended to replace or interpret such wider obligations.
	8.2	Record keeping is an essential component of the audit trail that the ML Regulations and FCA Rules seek to establish in order to assist in any financial investigation and to ensure that criminal funds are kept out of the financial system, or if not, that they may be detected and confiscated by the authorities.
Regulation 18(4), 19(1)(b), 39(2)(b)	8.3	As well as legislating for record keeping in relation to customer identification, and transactions with customers, there are obligations on firms to document their risk assessment, and their policies, controls and procedures. See paragraphs 1.54 and 2.3. A firm is also required to have written arrangements with any third party on which they rely to apply customer due diligence measures.

Regulation 40 SYSC 3.2.20R SYSC 6.3.1 R	8.4	Firms must retain records concerning customer identification and transactions as evidence of the work they have undertaken in complying with their legal and regulatory obligations, as well as for use as evidence in any investigation conducted by law enforcement. FCA-regulated firms must take reasonable care to make and keep adequate records appropriate to the scale, nature and complexity of their businesses.
Regulation 39	8.5	Where a firm has an appointed representative, it must ensure that the representative complies with the record keeping obligations under the ML Regulations. This principle would also apply where the record keeping is delegated in any way to a third party (such as to an administrator or an introducer).

What records have to be kept?

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| 8.6 | The precise nature of the records required is not specified in the legal and regulatory regime. The objective is to ensure that a firm meets its obligations and that, in so far as is practicable, in any subsequent investigation the firm can provide the authorities with its section of the audit trail. |
| 8.7 | The firm's records should cover: <ul style="list-style-type: none"> ➤ Customer information ➤ Transactions ➤ Internal and external suspicion reports ➤ MLRO annual (and other) reports ➤ Information not acted upon ➤ Training and compliance monitoring ➤ Information about the effectiveness of training |

Customer information

Regulation 40(2)	8.8	In relation to the evidence of a customer's identity, firms must keep a copy of any documents or information it obtained to satisfy the CDD measures required under the ML Regulations. Where a firm has received a confirmation of identity certificate, this certificate will in practice be the evidence of identity that must be kept. Some documents which may be used for evidence of identification are more sensitive than others (for example, Armed Forces Cards and Firearms certificates), and firms should deal with such evidence with care.
	8.9	When a firm has concluded that it should treat a client as financially excluded for the purposes of customer identification, it should keep a record of the reasons for doing so.
	8.10	A firm may often hold additional information in respect of a customer obtained for the purposes of enhanced customer due diligence or ongoing monitoring.
	8.11	The Home Office current guidance on copying passports is available at http://www.nationalarchives.gov.uk/documents/information-management/reproduction-british-passport.pdf

Regulation 40(3)(b)(ii)	8.12	Records of identification evidence must be kept for a period of five years after the business relationship with the customer has ended, i.e. the closing of the account or accounts.
Regulation 40(5)	8.13	<p>Upon the expiry of the five year period referred to in paragraph 8.12, firms must delete any personal data unless:</p> <ul style="list-style-type: none"> ➤ the firm is required to retain records containing personal data by, or under, any enactment, or for the purposes of any court proceedings; or ➤ the firm has reasonable grounds for believing that records containing the personal data need to be retained for the purpose of legal proceedings; or ➤ the data subject has given consent to the retention of that data.
Regulation 40(6)	8.14	A firm which is relied on by another firm for the purposes of customer due diligence must keep the records referred to in paragraph 8.8 for five years from the ending of the business relationship with the customer.
	8.15	Where documents verifying the identity of a customer are held in one part of a group, they do not need to be held in duplicate form in another. The records do, however, need to be accessible to the nominated officer and the MLRO and to all areas that have contact with the customer, and be available on request, where these areas seek to rely on this evidence, or where they may be called upon by law enforcement to produce them.
	8.16	When an introducing branch or subsidiary undertaking ceases to trade or have a business relationship with a customer, as long as his relationship with other group members continues, particular care needs to be taken to retain, or hand over, the appropriate customer records. Similar arrangements need to be made if a company holding relevant records ceases to be part of the group. This will also be an issue if the record keeping has been delegated to a third party.

Transactions

	8.17	All transactions carried out on behalf of or with a customer in the course of relevant business must be recorded within the firm's records. Transaction records in support of entries in the accounts, in whatever form they are used, e.g. credit/debit slips, cheques, should be maintained in a form from which a satisfactory audit trail may be compiled where necessary, and which may establish a financial profile of any suspect account or customer.
Regulation 40(3)(a)(b)⊕	8.18	<p>Records of all transactions relating to a customer must be retained for a period of five years from:</p> <ul style="list-style-type: none"> ➤ where the records relate to an occasional transaction, the date when the transaction is completed; or ➤ in other cases, the date the business relationship ended, i.e. the closing of the account or accounts.
Regulation 40(4)		But: a firm is not required to retain records relating to transactions occurring in a business transaction relationship for more than 10 years.

- 8.19 In the case of managers of investment funds or issuers of electronic money, where there may be no business relationship as defined in the ML Regulations, but the customer may nevertheless carry out further occasional transactions in the future, it is recommended that all records be kept for five years after the investment has been fully sold or funds disbursed.
- Regulation 40(5) 8.20 Upon the expiry of the period referred to in paragraph 8.18, firms must delete any personal data unless:
- the firm is required to retain records containing personal data by, or under, any enactment, or for the purposes of any court proceedings; or
 - the firm has reasonable grounds for believing that records containing the personal data need to be retained for the purpose of legal proceedings; or
 - the data subject has given consent to the retention of that data.

Internal and external reports

- 8.21 A firm should make and retain:
- records of actions taken under the internal and external reporting requirements; and
 - when the nominated officer has considered information or other material concerning possible money laundering, but has not made a report to the NCA, a record of the other material that was considered.
- 8.22 In addition, copies of any SARs made to the NCA should be retained.
- 8.23 Records of all internal and external reports should be retained for at least five years from the date the report was made.

Other

- 8.24 A firm's records should include:
- (a) in relation to training:
 - dates AML training was given;
 - the nature of the training;
 - the names of the staff who received training; and
 - the results of the tests undertaken by staff, where appropriate.
 - (b) in relation to compliance monitoring -
 - reports by the MLRO to senior management; and
 - records of consideration of those reports and of any action taken as a consequence.
- Regulation 21(8),(9) 8.25 A firm must establish and maintain systems which enable it to respond fully and rapidly to enquiries from financial investigators accredited under s3 of POCA, persons acting on behalf of the Scottish Ministers

in their capacity as an enforcement authority under the Act or constables, relating to:

- whether it maintains, or has maintained during the previous five years, a business relationship with any person; and
- the nature of that relationship.

Form in which records have to be kept

- 8.26 Most firms have standard procedures which they keep under review, and will seek to reduce the volume and density of records which have to be stored, whilst still complying with statutory requirements. Retention may therefore be:
- by way of original documents;
 - by way of photocopies of original documents;
 - on microfiche;
 - in scanned form;
 - in computerised or electronic form.
- 8.27 The record retention requirements are the same, regardless of the format in which they are kept, or whether the transaction was undertaken by paper or electronic means.
- 8.28 Firms involved in mergers, take-overs or internal reorganisations need to ensure that records of identity verification and transactions are readily retrievable for the required periods when rationalising computer systems and physical storage arrangements.

Location

- 8.29 The ML Regulations do not state where relevant records should be kept, but the overriding objective is for firms to be able to retrieve relevant information without undue delay.
- 8.30 Where identification records are held outside the UK, it is the responsibility of the UK firm to ensure that the records available do in fact meet UK requirements. No secrecy or data protection legislation should restrict access to the records either by the UK firm freely on request, or by UK law enforcement agencies under court order or relevant mutual assistance procedures. If it is found that such restrictions exist, copies of the underlying records of identity should, wherever possible, be sought and retained within the UK.
- 8.31 Firms should take account of the scope of AML/CTF legislation in other countries, and should ensure that group records kept in other countries that are needed to comply with UK legislation are retained for the required period.
- 8.32 There can sometimes be tension between the provisions of the ML Regulations and data protection legislation; the nominated officer and the MLRO must have due regard to both sets of obligations.

8.33 When setting document retention policy, financial sector businesses must weigh the statutory requirements and the needs of the investigating authorities against normal commercial considerations. When original vouchers are used for account entry, and are not returned to the customer or his agent, it is of assistance to the law enforcement agencies if these original documents are kept to assist in forensic analysis. This can also provide evidence for firms when conducting their own internal investigations. However, this is not a requirement of the AML legislation, and retaining electronic/digital copies may be a more realistic storage method.

Sanctions and penalties

Regulation 86(1) 8.34 Where the record keeping obligations under the ML Regulations are not observed, a firm or person is open to prosecution, including imprisonment for up to two years and/or a fine, or regulatory censure.