

Information Commissioner's Office

Consultation:

Direct Marketing Code

Start date: 8 January 2020

End date: 4 March 2020

Introduction

The Information Commissioner is producing a direct marketing code of practice, as required by the Data Protection Act 2018. A draft of the code is now out for public consultation.

The draft code of practice aims to provide practical guidance and promote good practice in regard to processing for direct marketing purposes in compliance with data protection and e-privacy rules. The draft code takes a life-cycle approach to direct marketing. It starts with a section looking at the definition of direct marketing to help you decide if the code applies to you, before moving on to cover areas such as planning your marketing, collecting data, delivering your marketing messages and individuals rights.

The public consultation on the draft code will remain open until **4 March 2020**. The Information Commissioner welcomes feedback on the specific questions set out below.

You can email your response to directmarketingcode@ico.org.uk

Or print and post to:

Direct Marketing Code Consultation Team
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

If you would like further information on the consultation, please email the [Direct Marketing Code team](#).

Privacy statement

For this consultation we will publish all responses received from organisations except for those where the response indicates that they are an individual acting in a private capacity (eg a member of the public). All responses from organisations and individuals acting in a professional capacity (eg sole traders, academics etc) will be published but any personal data will be removed before publication (including email addresses and telephone numbers).

For more information about what we do with personal data please see our [privacy notice](#)

Q1 Is the draft code clear and easy to understand?

Yes

No

If no please explain why and how we could improve this:

Q2 Does the draft code contain the right level of detail? (When answering please remember that the code does not seek to duplicate all our existing data protection and e-privacy guidance)

Yes

No

If no please explain what changes or improvements you would like to see?

Q3 Does the draft code cover the right issues about direct marketing?

Yes

No

If no please outline what additional areas you would like to see covered:

Q4 Does the draft code address the areas of data protection and e-privacy that are having an impact on your organisation's direct marketing practices?

Yes

No

If no please outline what additional areas you would like to see covered

Q5 Is it easy to find information in the draft code?

Yes

No

If no, please provide your suggestions on how the structure could be improved:

Q6 Do you have any examples of direct marketing in practice, good or bad, that you think it would be useful to include in the code

Yes

No

If yes, please provide your direct marketing examples :

Q7 Do you have any other suggestions for the direct marketing code?

GDPR stipulated that consent and legitimate interest have equal standing in law while the new code arguably leans more heavily towards consent and does not follow that previous positioning. If this position is influenced by what the ICO regards as an overly liberal use of legitimate interest then it should take action against those who are using this basis for processing personal data illegitimately or incorrectly rather than pushing people away from the correct use of this basis.

The most pressing issue for UK citizens and the Direct Marketing Industry is the growing chasm between the detailed proposals for our sector and the absence of detailed plans / progress in the digital marketing sector. While the clarification and restatement of the key principles of GDPR is helpful however it does reinforce just how far behind the EU has fallen in its purported ambition to update the ePrivacy guidance and create alignment between regulatory regimes for direct marketing and digital marketing. Indeed the failure of the ICO to back up the rhetoric it was using last year towards the Adtech industry simply reinforces the belief that the direct marketing world is subject to increasing scrutiny which has the potential to drive advertisers away from spending on these channels and towards those digital channels where little if any regulation currently applies and no framework appears imminent. This lack of alignment in regulatory regimes arguably creates an anti-competitive situation as digital marketing could be perceived as a less regulated space. Certainly it is not providing the equivalent levels of protection across channels that citizens deserve. The ICO must address this disparity in treatment across sectors as a matter of urgency. It is not always what the regulations state but how they are interpreted and the implementation of GDPR in the UK saw a lot of perhaps unintended consequences which were detrimental to the direct marketing industry because of the way that businesses understood or failed to understand the new law.

Finally the period six months outlined as best practice timeframe for contacting new customers on the basis of consent is impractical for some sectors where for example the trigger for the sending of direct marketing might be an impending annual renewal of a telecoms contract or an insurance renewal. Or indeed a longer period for those purchasing white goods or cars. It is unlikely that an insurance company would want to contact an individual if it knows their premium renewal date until perhaps 10-11 months after the acquisition of their consent to contact them. It is reasonable to expect that an individual who has given consent to contact them about their next renewal might not expect to hear from that company until such time and would find it frankly odd to be receiving a message to re-consent after only six months when the renewal is not front of their mind.

About you

Q8 Are you answering as:

- An individual acting in a private capacity (eg someone providing their views as a member of the public)
- An individual acting in a professional capacity
- On behalf of an organisation
- Other

Please specify the name of your organisation:

Whistl UK

If other please specify:

Q9 How did you find out about this survey?

- ICO Twitter account
- ICO Facebook account
- ICO LinkedIn account
- ICO website
- ICO newsletter
- ICO staff member
- Colleague
- Personal/work Twitter account
- Personal/work Facebook account
- Personal/work LinkedIn account
- Other

If other please specify:

Thank you for taking the time to complete the survey