

Employment practices: monitoring at work impact assessment

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Executive summary

This impact assessment accompanies the employment practices monitoring at work guidance (the guidance). The guidance replaces the “Monitoring at work” chapter of the ICO’s DPA98 employment practices code, produced in 2011. The overarching objective of the guidance is to provide relevant guidance, clarity and practical advice for monitoring at work, and to help employers who are monitoring workers to comply with UK GDPR and DPA 2018.

Problem definition and rationale for intervention

The prevalence of monitoring at work has increased significantly, partly due to changes brought about by the COVID-19 pandemic. There have also been significant advancements in monitoring technologies and changes to employment relationships. These factors enhance the potential for harms, including data protection harms. As the ICO’s guidance was drafted in 2011 (before many of these shifts) it is limited in its ability to support organisations with the data protection implications of these changes.

There is a strong rationale for ICO intervention, to reduce the risk of data protection harms to UK workers and reduce a potential information gap. As the data protection regulator, the ICO is uniquely placed to intervene.

Options appraisal

In the context of the problem identified, the options for regulatory intervention considered were:

- 1. Do nothing:** do not provide any additional guidance or update the current guidance;
- 2. Do less:** provide updates to the existing employment practices code;
- 3. Preferred option:** produce a new suite of complementary but standalone guidance products that replace the employment practices code and publish them as and when they are ready; and
- 4. Do more:** replace the existing code with a new single guidance product that covers all the necessary areas.

These four options were appraised against relevant critical success factors and Option 3 was identified as the preferred option.

Detail of the proposed intervention

The guidance on monitoring at work will sit within a suite of complementary, yet standalone, guidance covering employment practices. The new online resource is intended to be more user-friendly than the DPA98 employment practices code and include topic-specific resources. It aims to address the changes in data protection law and reflect the changes in the way employers use technology and

interact with staff. The route to impact for the intervention is set out in the theory of change in [Figure 1](#).

There are various groups that could be affected by the monitoring at work guidance including, UK employers, UK workers, UK monitoring solutions providers and wider society.

Cost-benefit analysis

The costs and benefits of the intervention have been identified, quantitatively and qualitatively, as far as is possible and proportionate. There are significant evidence gaps around the quantification of UK workers and UK monitoring solutions providers which limit our ability to monetise impacts.

Overall our assessment suggests that the benefits, in particular through reducing potential data protection related harms for workers and related benefits to wider society, outweigh the costs identified.

Monitoring and evaluation

In line with organisational standards, when the guidance is finalised, we will put in place an appropriate and proportionate review structure. This will follow best practice and align with our organisational reporting and measurement against ICO25 objectives.

1. Introduction

This document sets out the findings from our ex-ante assessment of the impact of the monitoring at work guidance. The purpose of impact assessments is to:

- inform decision-makers about potential economic, social, and (where relevant) environmental ramifications;
- provide a mechanism to consider the impact of interventions on a range of stakeholders and potential mitigation measures;
- improve the transparency of regulation by explicitly setting out the intervention theory of change and the quality of underlying evidence;
- increase public awareness to improve the legitimacy of the policy; and
- contribute to continuous learning in policy development by identifying causalities that inform ex-post review and improve future policy-making.

The structure of the report is as follows:

- 1: Introduction:** This introduces the guidance and covers the approach taken in assessing the anticipated impacts of the guidance.
 - 2: Problem definition and rationale for intervention:** sets out the economic, social and political context for the code as well as the rationale for producing it.
 - 3: Identification of alternative for options appraisal:** Provides a review of alternative policy options against critical success factors.
 - 4: Details of proposed intervention:** provides an overview of the proposed guidance and the affected groups.
 - 5: Cost and Benefits of the guidance:** presents the findings of the cost benefit analysis for the guidance.
 - 6: Monitoring and review:** outlines future monitoring considerations.
- A.** Finally, **Annex A** gives more detail on how familiarisation costs are estimated to support the assessment of costs and benefits.

1.1. Approach

Our approach follows the principles set out in the ICO's Impact Assessment Framework,¹ which in turn is aligned with [HM Treasury's Green Book](#), [Regulatory Policy Committee](#) guidance, and [Business Impact Target](#) guidance on best practice for impact assessments.

We have assessed the ex-ante impacts using cost-benefit analysis. We aim to identify the full range of impacts by assessing both the costs and benefits of the guidance. However, we also recognise that, in line with the principle of

¹ ICO (2023) *The ICO's approach to impact assessment – our draft Impact Assessment Framework*. Available at: <https://ico.org.uk/media/about-the-ico/consultations/4023825/draft-impact-assessment-framework-20230130.pdf> (Accessed 05 September 2023).

proportionality, it is not always practical nor necessary to consider in detail all the guidance’s implications.

1.1.1. Theory of Change

Our impact assessment approach is underpinned by an ‘output to outcome to impact’ methodology, called the theory of change. We consider the activities carried out by the ICO, UK organisations and people in the UK and then consider how immediate, intermediate and long term outcomes contribute to impact. This framework also guides the structure of this report. An illustration of the theory of change for this intervention is presented in Section 4.

1.2. Key terminology

Table 1: Key terminology

Term	Definition
Monitoring at work	Organisations carrying out checks on workers during work time, this could be systematic or occasional.
The guidance	The ICO’s ‘Employment Practices – Monitoring at Work’ guidance.
Worker	Someone who performs work for an organisation. This includes but is not limited to employees, contractors, self-employed, gig economy workers, volunteers. It incorporates all circumstances where there is an employment relationship or otherwise a relationship between an organisation and an individual where the individual performs work for the organisation, regardless of the nature of the contract.
Relevant organisation	In this instance, relevant organisation refers to a private, public, or voluntary and community sector body that has one or more employment relationships with individuals, regardless of the nature of contract.
Monitoring techniques	Technology or processes that allow organisations to track the activity of workers for any purpose.

2. Problem definition and rationale for intervention

This section sets out the problem that the guidance aims to solve, the economic, social and political context for the monitoring of employees at work, the policy context and the data protection harms related to monitoring employees at work. It also sets out why the ICO is best placed to resolve the issue.

2.1. Problem definition

The ICO's current employment practices code, which covers workplace monitoring, was drafted in 2011.² Since then, the world of work has changed considerably. Technology, employment relationships, data protection law and the COVID-19 pandemic have all impacted on working practices. Evidence of these changes is provided in Section 2.2 below. As a regulator, the ICO is well placed to provide regulatory certainty and reduce the risk of data protection harms materialising for workers. These harms are covered in more detail in Section 2.3.

2.2. Social and economic context

Workplace monitoring typically involves the surveillance or tracking of workers' activities, such as computer usage, internet browsing, emails and sometimes workers whereabouts. Organisations monitor employees for a variety of legitimate reasons. These include:

- demonstrating adherence to regulatory requirements;
- protecting the health and safety of employees;
- checking the quality and quantity of work; and
- maintaining security.

The emergence of more sophisticated technology to enable this monitoring has resulted in increased demand for updated guidance. These technologies range from traditional time management systems to more sophisticated analytics which track activity on employee devices such as keystrokes and screen time,³ and will continue to evolve. They have the ability to collect vast amounts of personal data, and concerns around how this data will be used has heightened data protection concerns.

² ICO (2011) *Employment practices code*. Available at: https://ico.org.uk/media/for-organisations/documents/1064/the_employment_practices_code.pdf (Accessed: 2 August 2023).

³ Electronic Frontier Foundation (2020) *Inside the Invasive, Secretive "Bossware" Tracking Workers* | Electronic Frontier Foundation (eff.org) Available at: <https://www.eff.org/deeplinks/2020/06/inside-invasive-secretive-bossware-tracking-workers>. (Accessed: 26 April 2023).

These technological developments are set against the backdrop of an evolving economic and social context which is explored below.

2.2.1. Prevalence of workplace monitoring

While workplace monitoring is not a new concept, it is increasingly prevalent. Monitoring is becoming easier and cheaper as a result of new technology.⁴

Around 60% of large employers are now using tools to track their workers. This proportion is expected to rise to 70% in the next few years.⁵ A survey commissioned by the Trade Union Congress (TUC) suggests that 60% of TUC members believe they have been subject to some form of surveillance and monitoring at work.⁶ This has increased from 53% in 2020.⁷

The increase can be partly attributed to changes brought about by the COVID-19 pandemic. During the pandemic employers and employees had to adapt their ways of working via working from home. The TUC reported that 28% of its members surveyed agree monitoring and surveillance has increased since the pandemic. The increase has been partially fuelled by productivity concerns, with 85% of senior managers "have trouble believing their employees are being productive".⁸

Research also shows that online searches related to monitoring employees increased as the pandemic began and then continued to increase after that. This is shown in Table 2 below.

⁴ Institute of Public Policy Research (IPPR) (2023) *Watching me, watching you: Worker surveillance in the UK after the pandemic*. Available at: <https://www.ippr.org/research/publications/worker-surveillance-after-the-pandemic>. (Accessed: 02 August 2023).

⁵ Gartner (2022) *3 Ways to Monitor Employee Productivity*. Available at: <https://www.gartner.com/en/articles/the-right-way-to-monitor-your-employee-productivity#:~:text=According%20to%20Gartner%20research%2C%20the,within%20the%20next%20three%20years>. (Accessed: 23 March 2023).

⁶ TUC (2022) *Intrusive worker surveillance tech risks "spiralling out of control" without stronger regulation, TUC warns*. Available at: <https://www.tuc.org.uk/news/intrusive-worker-surveillance-tech-risks-spiralling-out-control-without-stronger-regulation>. ⁶ TUC (2022) *Intrusive worker surveillance tech risks "spiralling out of control" without stronger regulation, TUC warns*. Available at: <https://www.tuc.org.uk/news/intrusive-worker-surveillance-tech-risks-spiralling-out-control-without-stronger-regulation>. (Accessed: 06 July 2023).

⁷ BBC (2022) *The employee surveillance that fuels worker distrust*. Available at: <https://www.bbc.com/worklife/article/20220621-the-employee-surveillance-that-fuels-worker-distrust>. (Accessed: 26 April 2023).

⁸ Microsoft (2022) *Hybrid Work Is Just Work. Are We Doing It Wrong?*. Available at: <https://www.microsoft.com/en-us/worklab/work-trend-index/hybrid-work-is-just-work> (Accessed: 26 April 2023).

Table 2: Change in monthly online searches for terms related monitoring employees at work

Increase in monthly searches		
Search term	March 2020 compared with previous year's monthly average	Change between March 2020 and March 2023
Employee monitoring software	102%	83%
Employee tracking	45%	51%
Monitoring employees in the workplace	-5%	23%
Best employee monitoring software	140%	188%

Source: Migliano (2023) [Employee Monitoring Software](#).

Whilst data on work place monitoring is not collected in a systematic way, analysis from the IPPR illustrates the changing nature of monitoring practices.⁹ In response to the change in working practices, organisations are increasingly looking for ways to monitor workers while they work from home. The increase in prevalence has various implications for data protection and could impact on the likelihood and severity of data protection harms. These are discussed in more detail later in Section 2.3.

2.2.2. Changes in labour market characteristics

It is worth highlighting that the labour market has changed significantly since the previous ICO guidance was published in 2011. New technology has helped facilitate these changes. One of the most significant changes is the rise of the gig economy.^{10,11}

Whilst there is no formal estimate or definition of the gig economy, it is loosely described as a labour market characterised by the prevalence of short-term

⁹ Institute of Public Policy Research (IPPR) (2023) *Watching me, watching you: Worker surveillance in the UK after the pandemic*. Available at: <https://www.ippr.org/research/publications/worker-surveillance-after-the-pandemic>. (Accessed: 02 August 2023).

¹⁰ House of Commons Work and Pensions Committee (2017) *Self-employment and the gig economy*. Available at: <https://publications.parliament.uk/pa/cm201617/cmselect/cmworpen/847/847.pdf>. (Accessed: 09 August 2023).

¹¹ ONS (2021) *Workers in the gig economy*. Available at: <https://www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/workersinthegigeconomy> (Accessed: 22 June 2023).

contracts or freelance work, as opposed to permanent jobs.¹² An estimate from BEIS suggests around 2.8 million workers participate in the gig economy.¹³

The changes in labour markets and advancement in technologies emphasise the need for updated guidance on workplace monitoring.

2.3. Data protection harms related to monitoring of employees at work

Given the variety and evolution of working practices, the associated potential data protection harms can vary significantly, in degree and type. In line with Article 82 of the UK GDPR, harms can include:

- physical harm: physical injury or other harms to physical health;
- material harm: harms that are more easily monetised such as financial harm; or
- non-material harm: less tangible harms such as distress.

This means that harm can arise from actual damage and more intangible harm, including any significant economic or social disadvantage. Of course, harms may also fall into more than one of these categories.¹⁴

There may be a harmful impact on wider society. For example, unfair or unlawful processing of personal data for the purpose of workplace monitoring may lead to a loss of trust within the workplace. This could then have a chilling effect on wider employer-worker relations. To assist with understanding the harms which the guidance aims to address, some examples have been provided below. This list is not exhaustive or hierarchical in terms of harms and their impact.

2.3.1. Unwarranted intrusion

While monitoring in the workplace is legal, in some cases the intensity of monitoring activity can be disproportionate to its stated purpose. This can result in unwarranted intrusions such as excessive or unwarranted surveillance.

Example: [‘I feel constantly watched’: the employees working under surveillance](#)

A report by the Guardian collected anonymous views from workers on their experiences of monitoring at work. Those being monitored describe quickly

¹² BBC (2017) *What is the ‘gig’ economy*. Available at: <https://www.bbc.co.uk/news/business-38930048> (Accessed: 22 June 2023).

¹³ Department for Business, Energy & Industrial Strategy (2018) *The Characteristics of those in the gig economy*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/687553/The_characteristics_of_those_in_the_gig_economy.pdf (Accessed: 22 June 2023)

¹⁴ For more information on data protection harms see ICO (2022): <https://ico.org.uk/about-the-ico/researchand-reports/data-protection-harms>.

becoming uncomfortable with being watched “constantly”. Some practices are used to provide workers with “activity scores”. The lack of transparency around these scores and how they are calculated was reported to have contributed to workers becoming uncomfortable, stressed or harassed. Monitoring in these case, can potentially result in unwarranted intrusion which can then lead on to other harms, such as psychological harms.

2.3.2. Bodily or emotional harm

Excessive workplace monitoring, while it may lead to other harms such as unwarranted intrusion, can also lead to emotional harm and cause stress and anxiety amongst employees.¹⁵

Example: [Devon and Cornwall police physical activity monitoring](#)

In an attempt to promote physical activity amongst its officers, Devon and Cornwall Police participated in a mobile health intervention trial. Officers were provided with activity monitors and smartphone apps. The aim was to promote physical activity and reduce sedentary times. While the trial was successful in increasing physical activity, officers reported feelings of anxiety and cognitive rumination as a result of tracking physical activity and sleep.

2.3.3. Discrimination

Excessive workplace monitoring has the potential to be discriminatory. If monitoring is implemented without clear and objective criteria, it can result in biased outcomes. It is crucial for organisations to ensure that monitoring practices are transparent to help avoid discriminatory outcomes.

Example: [Taxi driver’s legal action over ‘racist’ facial-recognition software](#)

In 2021, a taxi driver was dismissed due to an organisation’s facial recognition software not recognising him. The driver alleged that the software had higher error rates for people with darker skin. This case raises concerns about the potential discriminatory impact of software deployed for workplace monitoring. There is also a risk of knock-on financial harms through loss of earnings. This

¹⁵ Siegel, König and Lazar (2022) *The impact of electronic monitoring on employees’ job satisfaction, stress, performance, and counterproductive work behavior: A meta-analysis* Available at: [The impact of electronic monitoring on employees’ job satisfaction, stress, performance, and counterproductive work behavior: A meta-analysis \(sciencedirectassets.com\)](https://www.sciencedirectassets.com) (Accessed: 6 July 2023).

emphasises the need for transparency and safeguards to prevent discrimination as a result of monitoring practices.

2.3.4. Financial loss and reputational damage

When workplace monitoring is not applied properly, it can lead to financial harm for workers if used to make decisions regarding their employment without scrutiny. If data gathered through workplace monitoring is used to make decisions on whether to terminate a working relationship (as in the example above) or their pay, this can have a financial impact on workers through lost wages and/or litigation costs.

2.4. Policy context

It is important to consider the wider policy context surrounding the problem to assess where there is positive or negative alignment a proposed intervention. This includes both internal policy but also wider initiatives such as government policy.

2.4.1. Internal policy

[ICO25](#) is the ICO's overarching strategic plan. The first two objectives of the plan are:

- safeguard and empower people; and
- empower responsible innovation and sustainable economic growth.

Being able to find the balance between the benefits of improved productivity and data protection of workers is imperative as new ways of working and monitoring technologies emerge.

2.4.2. Relevant legislation

We developed the guidance in accordance with relevant legislation on data protection and employment law, in particular the [UK General Data Protection Regulation](#) (UK GDPR) and the [Data Protection Act 2018](#) (DPA 2018). These laws control how organisations, businesses or the government use personal information.

UK government is currently working on a [Data Protection and Digital Information Bill](#). Although this is not yet finalised, it will likely become the most relevant legal framework if and when it becomes law. It is important that the guidance is flexible and well-maintain so it can be updated to align with the emerging bill.

Other relevant legislation includes:

Human Rights Act 1998

The right to respect for private and family life is set out in Article 8 of the European Convention on Human Rights, incorporated into UK law through the Human Rights Act 1998.¹⁶ Workers are entitled to a reasonable expectation of privacy. This protects workers' privacy at work, balanced against business interests.

Equality Act 2010

The Equality Act 2010 applies to a range of organisations, including government departments, service providers, employers, education providers, transport providers, associations, and membership bodies, as well as providers of public functions.¹⁷ This law is relevant as processing which does not comply with it is likely to infringe the 'fairness' principle of the UK GDPR.

2.4.3. Relevant external policy

The most relevant external policy considerations are:

The National data strategy

The National Data Strategy looks at how to use the UK's existing strengths to boost the better use of data across businesses, government, civil society and people.¹⁸

The strategy has five main missions which set out the priority areas. These are:

1. Unlocking the value of data across the economy;
2. Securing a pro-growth and trusted data regime;
3. Transforming government's use of data to drive efficiency and improve public services;
4. Ensuring the security and resilience of the infrastructure on which data relies; and
5. Championing the international flow of data.

Providing regulatory certainty aligns well with all the missions listed. For example, assisting organisations in complying with data protection legislation aligns well with the second mission, through improving trust in the data regime to enable growth.

¹⁶ *Human Rights Act 1998* Available at: <https://www.legislation.gov.uk/ukpga/1998/42/contents> (Accessed 22 September 2023)

¹⁷ *The Equality Act 2010* Available at: <https://www.legislation.gov.uk/ukpga/2010/15/contents> (Accessed 22 September 2023)

¹⁸ DCMS (2020) *National Data Strategy* Available at: <https://www.gov.uk/government/publications/uk-national-data-strategy/national-data-strategy> (Accessed: 29 August 2023)

UK digital strategy

Another important policy consideration is the UK Digital Strategy,¹⁹ which sits alongside the National Data Strategy with the following objectives:

- Unlocking the power of data.
- A secure digital environment.
- Enhancing the UK's place in the world.

Providing clarity and practical advice should help organisations to feel more confident about their use of personal data and assist with meeting the objectives listed.

2.5. Rationale for intervention.

The risk for data protection harms outlined earlier in this section presents a market failure in the form of potential **negative externalities**. Data protection harms, particularly where the risk is widespread, have the potential to lead to knock on negative impacts for wider society. This includes the costs to society in addressing harms on individuals.

The rapid technological change and guidance that pre-dates the technological change could lead to regulatory uncertainty amongst both organisations and workers. This presents an additional market failure in the form of **imperfect information**. This means workers and organisations may not have all the information necessary to make an informed decision about their working relationships.

The ICO is uniquely placed to address these market failures as the data protection regulator. It also produced the original guidance so is well placed to update it. Without intervention, the market failures and risks to organisations, workers and wider society will continue to persist as evidence to date suggests the market cannot correct itself in this instance.

Summary

There is a strong rationale for intervention, to reduce the risk of data protection harms to UK workers and reduce a potential information gap.

Advancements in monitoring technologies, new ways of working and increasingly prevalent workplace monitoring, means outdated guidance enhances the potential for harms.

¹⁹ DCMS (2022) *UK Digital Strategy* Available at: <https://www.gov.uk/government/publications/uks-digital-strategy/uk-digital-strategy> (Accessed: 29 August 2023)

3. Identification of alternatives for options appraisal

This section outlines which options were considered to address the problem identified in Section 2 and why the preferred option was taken forward.

3.1. Options for consideration

A wide variety of options were considered for intervention. In the interests of proportionality, the options considered have been condensed into four options that provide a good sense of the implications of alternative approaches and demonstrate why the ICO decided on the preferred option. This approach follows government guidance on policy development and appraisal. The options are as follows:

- **Do nothing:** do not provide any additional guidance or update the current guidance;
- **Do less:** make updates to the ICO's existing employment practices code;²⁰
- **Preferred option:** produce a new suite of complementary but standalone guidance products that replace the employment practices code and publish them as and when they are ready; and
- **Do more:** replace the existing code with a new single guidance product that covers all the necessary areas.

3.2. Assessment of options

In line with government guidance, we qualitatively assesses the options against the following critical success factors in below:

- **Strategic alignment:** How each option furthers the ICO's current strategic goals and the wider policy landscape (eg. ICO25, National Data Strategy, upcoming legislative change).
- **Cost:** the cost for the ICO of delivering and maintaining the option in terms of staff time and other ICO resources.
- **Achievability:** How achievable it is considering capacity and capability within the ICO.
- **Risk:** the risks posed to the ICO, including legal and reputational risks (this includes the risks of the ICO being challenged on outdated guidance).

²⁰ ICO (2011) *Employment practices code*. Available at: https://ico.org.uk/media/for-organisations/documents/1064/the_employment_practices_code.pdf (Accessed: 2 August 2023).

- **Impact:** The potential impact of the option considering both costs and benefits and is presented as either negative (-ve) or positive (+ve) overall.

The options are scored against each of these factors using the information available and the professional judgement of the assessors. Principles of proportionality have been applied here. As evidence is limited, the assessment should be viewed as indicative rather than a robust assessment of each of the factors. Each option has been given a red, amber or green (RAG) rating against each of the factors to highlight the implication of the assessment outcome.

Table 3 Assessment of options

Option	Strategic alignment	Cost	Achievability	Risk	Impact
Do nothing	Low	Low	High	Medium	Low (-ve)
Do less	Low	Low	High	Medium	Low (-ve)
Preferred option	High	Medium	High	Low	High (+ve)
Do more	High	High	Low	Low	High(+ve)

Source: ICO analysis.

The preferred options has no red ratings and four out of five are green. This is the highest scoring option and, as such, this is deemed the most appropriate option to progress.

The preferred option aligns well with internal objectives and with external policy considerations. There is an upfront cost of guidance development but this is mitigated by a potential future reduction in the volume of complaints related to the policy area and increased regulatory certainty. This is also expected to mitigate future risk for the ICO of guidance that is or is perceived to be outdated. The preferred option is achievable within current capacity and capability constraints and is expected to deliver a positive impact overall on society.

Summary

In the context of the problems identified in Section 2, options considered for updating monitoring at work guidance are:

- 1. Do nothing:** do not provide any additional guidance or update the current guidance;
- 2. Do less:** provide updates to the existing employment practices code;
- 3. Preferred option:** produce a new suite of complementary but standalone guidance products that replace the employment practices code and publish them as and when they are ready;

4. Do more: replace the existing code with a new single guidance product that covers all the necessary areas.

These four options were appraised against relevant critical success factors and Option 3 was identified as the preferred option.

4. Detail of proposed intervention

This section describes the intervention that the ICO is proposing to address the problem identified in Section 2. It sets out how the intervention is intended to deliver its intended impacts and outlines the groups that are likely be most affected by it.

4.1. The guidance

The guidance replaces the “Monitoring at work” chapter of the DPA98 employment practices code.²¹ It has up-to-date guidance that is relevant to today’s workplace.

The Monitoring at Work guidance will be placed on the dedicated [employment information section](#) of the ICO’s website, which includes a range of separate pieces of guidance covering aspects of data protection and employment. This section of the website updates and replace the existing employment practices code. The new online resource is intended to be more user-friendly and include topic-specific resources. It aims to address the changes in data protection law and reflect the changes in the way employers use technology and interact with staff.

4.1.1. Overarching objective

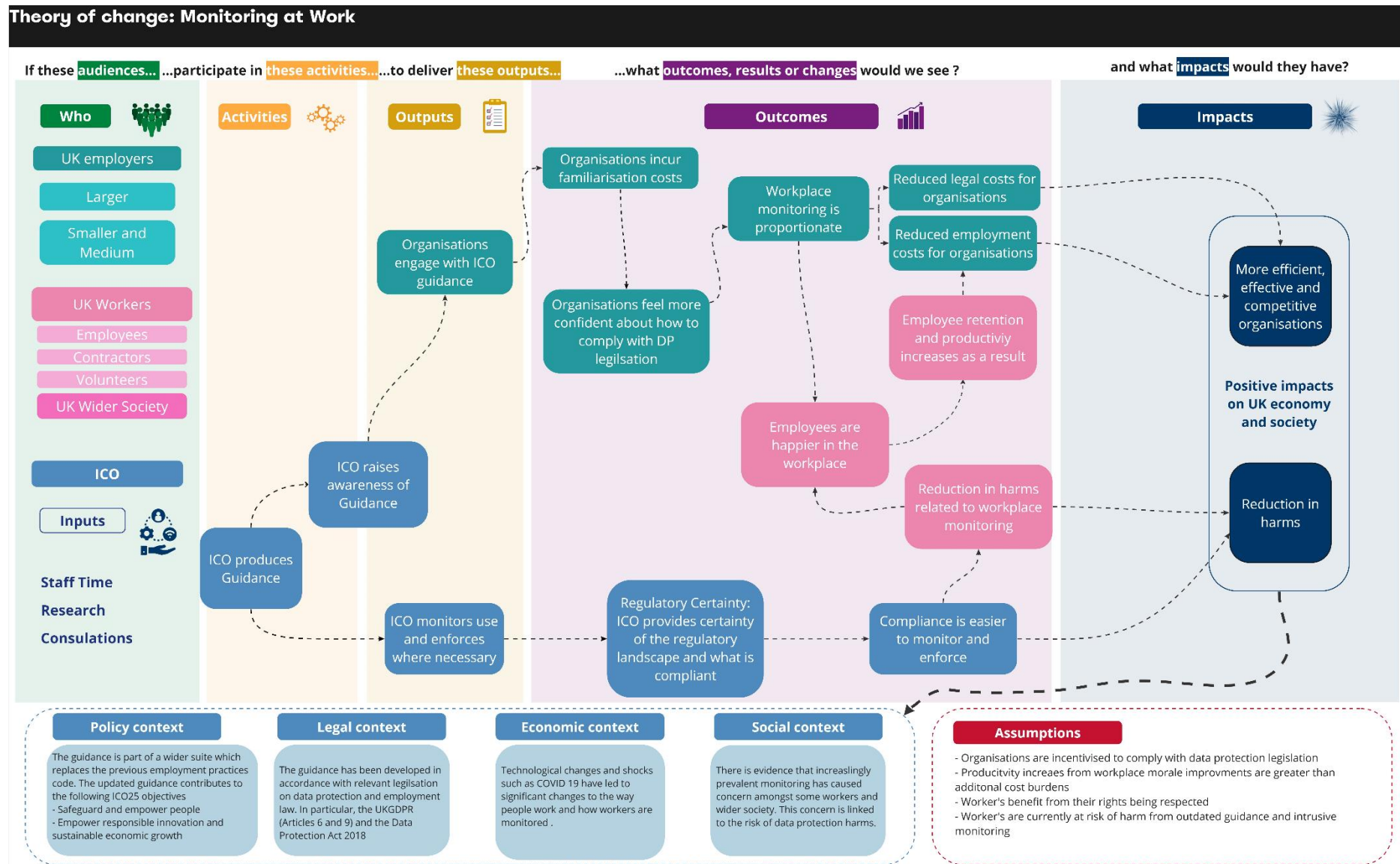
The overarching objective of the guidance is to provide relevant guidance, clarity and practical advice for monitoring at work, and to help employers who are monitoring workers comply with UK GDPR and DPA 2018. As outlined in Section 2.4, the guidance also aligns with overarching ICO objectives.

4.1.2. Theory of Change

Our impact assessment is underpinned by an ‘output to outcome to impact’ methodology, called the theory of change. This shows how the guidance links to a chain of results that lead to the intended impacts. It should be noted impact, linked to the rationale, is often the most difficult aspect to measure because it will occur over a longer period of time and can be influenced by other external factors. Our theory of change is shown in [Figure 1](#) below.

²¹ ICO (2011) *Employment practices code*. Available at: https://ico.org.uk/media/for-organisations/documents/1064/the_employment_practices_code.pdf (Accessed: 2 August 2023).

Figure 1: Monitoring at work – theory of change



4.2. Approach to the guidance

The guidance has been developed in consultation with industry and other relevant bodies which included:

- a call for views which ran between August and October 2021 and received 144 responses;²² and
- a public consultation on an initial draft of the guidance and a supporting impact assessment scoping document which ran between October 2022 and January 2023 and received 38 responses.

Over a third (14) of responses to the consultation were from employers and five were from individuals acting in a private capacity. Smaller numbers of responses came from organisations such as charities and trade unions. To address some of the issues raised in the consultation responses, additional clarification was added to the guidance. This was both around specific areas such as CCTV and more generally with the application of a 'must, could, should' approach that makes clearer which elements of the guidance are legal obligations.

Four of the respondents specifically addressed the impact scoping document. The responses included requests for more detail in some areas, evidence to support our assessment, and requests for the inclusion of additional affected groups or impacts, such as impacts on technology providers. This impact assessment responds to these requests by providing a greater level of detail on the approach and evidence used and an expansion of the assessment in a number of areas, relative to what was provided at the consultation stage.

4.3. Scope of the guidance

The guidance is aimed at all organisations, both public and private sector that have employees, workers, contractors or volunteers. The term 'worker' throughout refers to someone who performs work for an organisation. Business models have changed in the last decade, such as with the rise of the gig economy, and the guidance captures these relationships too. It is aimed at all circumstances where there is an employment relationship, regardless of the nature of the contract.

The guidance is not relevant to people recording information in a personal or household context unless there is professional or commercial activity. It is also important to note that working from home does not constitute personal or household processing, and so is also covered by the guidance.

²² ICO (2022) *Calls for views on employment practices and data protection*. Available at: https://ico.org.uk/media/about-the-ico/consultation-responses/4019364/employment-call-for-views-summary-report-v1_0.pdf. (Accessed 2 August 2023).

The guidance is not relevant for law enforcement authorities who monitor workers for ongoing criminal investigations. These are subject to the separate law enforcement processing regime in Part 3 of the DPA. It is however relevant to the Part 2 of the UK GDPR (non-law enforcement) processing carried out by such authorities. This means more general monitoring by law enforcement bodies in their capacity as employers could be covered by the guidance.

4.4. Affected groups

The main groups that we expect to be affected by the guidance are outlined below.

4.4.1. UK employers

The guidance is designed for the relevant organisations as described in Section 1.2. This potentially includes all UK organisations who employ staff. Table 4 outlines the available evidence on organisations with employees. As reading the guidance is optional, this is likely to be a conservative upper end estimate.

Table 4: Summary of organisations with employees

Sector	Number
Private	1,447,900
Public	7,400
Non-profit	54,700
Total	1.51 million

Source: BEIS (2022) Businesses Population Estimates.

There could be some organisations with non-standard relationships with workers that are not covered by the evidence source used. We could not find reliable evidence that incorporates these organisations but nonetheless expect this to be a small number.

4.4.2. UK workers

As the subjects of the monitoring activity, the guidance has the potential to affect workers. This includes anyone likely to be monitored while working, for example:

- employees;
- self-employed contractors; or
- volunteers.

Using ONS data on employment levels, we estimate that there are 27.1 million workers in the UK and 3.8 million self-employed people.²³ It is not possible to identify who is likely to be monitored (particularly for those who are self-employed). This also does not account for those who are volunteers, as it is not possible to identify those who are not already included in the workers figure to avoid double counting.

4.4.3. UK monitoring at work solution providers

The guidance could be of particular relevance to providers of monitoring at work solutions both in their design and implementation of the solutions. This includes those that develop technology for monitoring at work and those that are contracted to carry out the monitoring on behalf of another organisation. Reliable evidence on the total number of these providers is limited and as such this group is not quantified.

4.4.4. The ICO

The ICO will be affected, as the regulator of data protection legislation and as the producer of the guidance.

4.4.5. Wider society

This guidance has the potential to impact more than the affected groups identified thus far. It may have an indirect impact on wider society, with the potential to affect groups such as:

- Organisations within the supply chains of employers or monitoring solution providers;
- trade unions representing workers;
- civil society groups; and
- the wider population.

It is difficult to estimate who the guidance would and wouldn't affect indirectly. As such, we estimate the whole population as a conservative, upper-end estimate. According to latest estimates, there are around 67 million people in the UK.²⁴ There may also be organisations that have no workers that are

²³ NOMIS (2022) *Annual Population Survey*. Available at: <https://www.nomisweb.co.uk/datasets/apsnew> (Accessed: 30 August 2023) – This figure comes from the APS This source only provides figures for those aged 16-64. Note that this excludes workers 65 and over and therefore is likely to be an underestimate of employment.

²⁴ ONS (2022) *Population estimates for the UK, England, Wales, Scotland and Northern Ireland: mid-2021* Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/annualmidyearpopulationestimates/mid2021> (Accessed: 30 August 30 2023) Using census data from E&W and NI, with Mid Year estimates for Scotland 2021.

indirectly affected through their connection to employers or wider societal impacts. At the upper-end, this is estimated at 4.1 million organisations.²⁵

Summary

The ICO is replacing the existing employment practices guidance with a suite of complementary, yet standalone guidance products which includes guidance on monitoring at work.

The development of the monitoring at work guidance included a call for views and a public consultation. Alongside the public consultation a supporting impact assessment scoping note was published. There were 38 responses to the consultation.

Figure 1 sets out the theory of change. This shows the impacts which this guidance aims to achieve, the causal chain of events and how the main affected groups expect to be impacted.

There are various groups that could be affected by the monitoring at work guidance including, UK employers, UK workers, UK monitoring solutions providers and wider society. Current evidence gaps limit the extent to which these groups can be quantified.

²⁵ ONS (2022) *Business population estimates* Available at: <https://www.gov.uk/government/statistics/business-population-estimates-2022> (Accessed: 29 August 2023).

5. Cost-benefit analysis

In this section, we consider the guidance's potential costs and benefits. Our aim is to understand whether there are likely to be significant impacts on affected groups (both positive and negative; and direct and indirect) and to judge the overall impact on society. We draw on a mixture of quantitative and qualitative evidence but our analysis is limited by the evidence available.

Given this guidance is optional and the evidence on affected groups and existing levels of compliance is limited, we are not able to confidently and consistently distinguish between impacts that are attributable to the guidance and impacts that are attributable to existing legislation. Where possible this is addressed qualitatively but generally impacts have been considered as a whole. This means any conclusions drawn on the balance of impacts do not fully consider attribution but can be viewed as indicative of net attributable impacts.

5.1.1. Counterfactual

To help us measure the impact of the guidance, we have taken as our starting point what the situation is and would evolve without intervention, known as the counterfactual. The counterfactual is the baseline against which we estimate the additional impacts of introducing the guidance. If the guidance was not introduced, then the underlying data protection legislation and existing guidance would continue to apply and form the counterfactual for the purposes of this assessment.

In line with government guidance,²⁶ we assume compliance both with existing legislation and guidance, in the absence of specific evidence to suggest otherwise. This simplifies the assessment, but it is not intended to suggest that there is total compliance. If we did identify any specific lack of compliance, the guidance would help controllers to improve. As a guidance product, it does not impose any additional legal obligations, which limits the additional impacts over and above that of the counterfactual.

5.1.2. Monetising impacts

Quantified analysis of the impacts is particularly challenging for this guidance because of its wide ranging scope and the difficulty in quantifying the affected groups.

²⁶ BEIS (2019), *Business Impact Target: Appraisal of guidance: assessments for regulator-issued guidance*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609201/business-impact-target-guidance-appraisal.pdf (Accessed 21st June 2023).

Quantifying potential costs and benefits is particularly complex because this varies considerably depending on a range of different factors. These factors include:

- the nature of the employer's activities;
- the extent to which workers are monitored;
- the techniques used to monitor workers; and
- the likelihood and severity of data protection harms.

Our analysis therefore focuses primarily on non-monetised impacts. However, where possible, we have provided high level quantitative analysis to indicate scale.

5.1.3. Uncertainty, risk and optimism bias

As set out in the Green Book, it is necessary to consider the significant levels of uncertainty surrounding the impacts of the guidance. Although optimism bias is typically only considered in capital projects, we understand that there can be a tendency to overestimate engagement with guidance. To account for and demonstrate the implications of any potential bias, we have ensured that quantitative estimates are caveated appropriately.

5.2. Costs and benefits

Given the evidence gaps, the assessment findings are limited to the evidence presented in this paper, and experience from other relevant impact assessments. Although this prevents the quantification of impacts, the qualitative evidence enables us to reach an overall assessment.

Table 5 provides a summary of the types of impacts we have considered for each affected group, which is then followed by more detailed commentary for each of the affected groups that covers the most relevant impacts.

Table 5 Summary of potential impacts

Affected groups	Benefits	Costs
UK workers	<ul style="list-style-type: none"> Reduced risk of data protection harm to workers. Higher morale amongst workers. 	<ul style="list-style-type: none"> Reduced workplace monitoring using personal data could lead to increases in other forms of monitoring (eg micromanagement)
UK employers	<ul style="list-style-type: none"> Greater degree of regulatory certainty. Reduced legal risk and risk of regulatory action from the ICO where compliance improves. Higher workplace morale resulting in higher employee retention with associated productivity benefits. Improved DP compliance could lead to increased trust from consumers and associated revenue and other benefits. 	<ul style="list-style-type: none"> Costs of familiarisation with the guidance. Compliance costs could increase for employers that are not already compliant. Sunk costs for organisations which have invested in monitoring software that they now realise is non-compliant.
UK monitoring at work solution providers	<ul style="list-style-type: none"> Greater degree of regulatory certainty for planning, design and implementation. Improved DP compliance could lead to increased trust from consumers. 	<ul style="list-style-type: none"> Sunk costs for existing solutions or plans that they now realise is non-compliant. Costs of familiarisation with the guidance.
The ICO	<ul style="list-style-type: none"> An improved baseline from which to assess compliance and take appropriate regulatory action where required. Providing guidance may help lower the volume of complaints to the ICO and mitigate the burden of regulatory action later. 	<ul style="list-style-type: none"> Reputational risk if ICO is perceived to have overreached. Costs of developing and maintaining the guidance.
Wider society	<ul style="list-style-type: none"> Reduction in harms could improve overall societal welfare and reduce costs to society in supporting victims of harm. 	<ul style="list-style-type: none"> Disbenefits to organisations could lead to knock-on disbenefits to wider society (eg suppliers of monitoring software).

5.2.1. UK workers

The main route to impact for UK workers will be through actions employers take to improve their compliance with the law. This will depend on how compliant employers were in the first place and the extent to which they take the necessary steps to improve compliance. Where compliance does improve, UK workers could see a **reduction in the risk of potential harms** (see Section 2.3).

Where employers decide to make more significant changes, such as ceasing or reducing certain non-compliant activities, there could be **knock-on effects** for workers such as loss of employment (in extreme cases). This, however, would be a result of an employer taking steps to comply with existing legislation, rather than the guidance itself. In these cases the impacts would be justified by the existing legislation and are likely to be outweighed by a reduced risk of harm to workers or wider society.

5.2.2. UK employers

Impacts on UK employers depends on a range of factors. We anticipate two potential types of impact from the guidance

- Firstly, organisations will incur a **cost of becoming familiar with the guidance**. The guidance is relevant to a wide range of organisations. We indicatively estimate that the cost of familiarisations could be up to £113 per organisation (see annex A for more detail). However, there is a high degree of uncertainty given take up of the guidance is optional. This also means organisations are unlikely to take up the guidance unless they think the benefits to them outweigh the costs, perhaps due to reduced potential legal costs.
- Secondly, organisations could **make changes to their processes and monitoring practices and activities** as a result of the improved regulatory certainty provided by the guidance, particularly where they identify non-compliance. Again, given the guidance is optional, these changes are likely to be outweighed by the associated legal costs and risks of not making the changes.

5.2.3. UK worker monitoring solution providers

Providers of monitoring solutions could potentially be impacted in the following ways:

- As with employers, providers may decide to familiarise themselves with the guidance and incur a cost in doing so. This is optional and as such benefits to the providers are likely to outweigh familiarisation costs.
- Where the guidance provides regulatory certainty, providers may decide to change how they design, market or implement their solutions. This

could be to correct an element of non-compliance or to indicate higher levels of compliance to their clients.

- Where employers decide to change their monitoring activities to improve compliance, this could impact on revenue for providers. This impact could be negative where activities are ceased or reduce or positive where providers are able to provide clients with greater confidence in their compliance.

Evidence is limited in this area and it is not proportionate to robustly research the impacts on providers. Where there are significant negative impacts on providers, this is likely to be in areas where there were existing compliance issues. In those instances, the reduced risk of harms is likely to outweigh the negative impacts on providers.

5.2.4. The ICO

The ICO will incur costs in producing, raising awareness and maintaining the guidance. It is hoped that this will be significantly outweighed by the benefits of increased compliance.

5.2.5. Wider society

Impacts on wider society are difficult to measure or predict but these could include:

- reduction in the cost to society of dealing with the knock on effects of harms;
- improved understanding of data protection issues related to monitoring at work could also raise awareness of data protection issues more generally, resulting in a wider reduction in harms; and
- impacts on the supply chain of employers or monitoring solution providers where activities are ceased or reduced to improve compliance.

The balance of these impacts is not possible to robustly assess and is largely dependent on the impacts of other affected groups.

5.2.6. Overall assessment

Although evidence is limited, our qualitative assessment has identified a number of costs and benefits. Overall our assessment suggests that the benefits, in particular through reducing the potential harms to workers, will provide a net benefit to society. The benefits align strongly with the wider policy context and the original rationale for intervention.

Summary

The costs and benefits of the intervention have been identified, quantitatively and qualitatively, as far as is possible and proportionate. There are significant

evidence gaps around the quantification of UK workers and UK monitoring solutions providers which limit our ability to monetise impacts.

Overall our assessment suggests that the benefits, in particular through reducing the potential data protection related harms for workers and the related benefits to wider society, outweigh the costs identified.

6. Monitoring and evaluation

In line with organisational standards, when the guidance is finalised, we will put in place an appropriate and proportionate review structure. This will follow best practice and align with our organisational reporting and measurement against ICO25 objectives.

Annex A: Familiarisation costs

A.1. Familiarisation costs

This annex sets out the approach taken to estimate familiarisation costs for the guidance, which follows a standard approach drawn from previous impact assessments.^{27, 28}

According to government statistics, there are 1.5 million organisations with employees in the UK.²⁹ This guidance is not statutory, and there is no requirement for organisations to read it. As such, it would be unreasonable to use this figure, even as an upper end estimate, of the number of organisations that would familiarise themselves with the guidance.

Although we are not able to provide an estimate of total familiarisation costs, we have provided an estimate of familiarisation costs per organisations to give some indication of the costs that organisations may incur.

For the purposes of the assessment, we have made the simplifying assumption that each organisation or individual will read the guidance in its entirety once. This is not a recommendation on how organisations or individuals should familiarise themselves with the guidance, as this will differ on a case-by-case basis.

Familiarisation costs per organisation

Drawing on impact assessment guidance,³⁰ we estimate that the guidance, in its entirety, will take around 3hrs and 54 mins to read.

²⁷ ICO (2021) *Data sharing code of practice – Impact assessment*. Available at: <https://ico.org.uk/media/2619796/ds-code-impact-assessment-202105.pdf> (Accessed 19 April 2023).

²⁸ ICO (2020) *Age appropriate design: a code of practice for online services – Impact assessment*. Available at: https://ico.org.uk/media/2617988/aadc-impact-assessment-v1_3.pdf (Accessed 19 April 2023).

²⁹ BEIS (2022) *Businesses Population Estimates*. Available at: <https://www.gov.uk/government/statistics/business-population-estimates-2022> (Accessed 21st June 2023).

³⁰ BEIS (2019), *Business Impact Target: Appraisal of guidance: assessments for regulator-issued guidance*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609201/business-impact-target-guidance-appraisal.pdf (Accessed 21st June 2023).

Table 6: Estimated reading time per organisation

Document	Word count	Fleisch reading ease score	Assumed words per minute	Estimated reading time (hr:mn)
Guidance	17,937	40.9	75	03:59

Source: ICO analysis; BEIS (2019).³¹

The impact of familiarisation on organisations can be monetised using data on wages from the ONS Annual Survey of Hours and Earnings.³²

Making the conservative assumption that the relevant occupational group is 'Managers, Directors and Senior Officials', the 2022 median hourly earnings (excluding overtime) for this group is £23.25.

This hourly cost is uprated for non-wage costs using the latest figures from the Regulatory Policy Committee guidance,³³ resulting in an uplift of 22% and an hourly cost of £28.35. We use the hourly cost and the simplifying assumption of one individual handling familiarisation for each organisation to establish a cost per organisation.

This results in a **cost per organisation reading the guidance in its entirety of around £113.**

We also acknowledge that organisations will read the guidance in a proportionate manner. To illustrate this, we have used the assumptions that organisations will read the guidance relative to their employee count. As above, this is just for illustrative purposes rather than an indication of how organisation should approach the guidance. This breaks down as follows:

- small organisations (1-49 workers) would read 10%
- medium organisations (50-249 workers) would read 50%
- large organisations (250 or more workers) would read 100%.

³¹ BEIS (2019), *Business Impact Target Statutory Guidance*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776507/Business_Impact_Target_Statutory_Guidance_January_2019.pdf (Accessed 21st June 2023).

³² ONS (2022), *Annual Survey of Hours and Earnings*. Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/ashe1997to2015selectedestimates> (Accessed 21st June 2023).

³³ RPC (2019) *RPC guidance note on 'implementation costs'*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827926/RPC_short_guidance_note_-_Implementation_costs_August_2019.pdf (Accessed 21st June 2023).

Table 7: Familiarisation costs per organisation by size

Organisation size by number of workers	Coverage	Reading time	Cost per organisation
small (1-49)	10%	00hrs: 23mins	£11
Medium (50-249)	50%	01hrs:57mins	£57
Large (250+)	100%	03hrs:54mins	£113

Source: ICO analysis.