

ICO call for views on a direct marketing code of practice

The Information Commissioner is calling for views on a direct marketing code of practice.

The Data Protection Act 2018 requires the Commissioner to produce a code of practice that provides practical guidance and promotes good practice in regard to direct marketing.

While direct marketing is an important and useful tool to help organisations engage with people in order to grow their business or to publicise and gain support for their causes, it can also be intrusive and have a negative impact on people if done badly. This can cause reputational damage to organisations and, in some cases, result in fines or other regulatory action for breaking data protection laws.

So it is important that organisations ensure their marketing activities are compliant with data protection legislation (the General Data Protection Regulation and Data Protection Act 2018) and, where necessary, the Privacy and Electronic Communications Regulations 2003 (PECR).

We have previously published detailed [direct marketing guidance](#). The new code will build on that guidance and address the aspects of the new legislation relevant to direct marketing such as transparency and lawful bases for processing, as well as covering the rules on electronic marketing (for example emails, text messages, phone calls) under PECR.

The European Union is in the process of replacing the current e-privacy law (and therefore PECR) with a new ePrivacy Regulation (ePR). However the new ePR is yet to be agreed and there is no certainty about what the final rules will be. Because of this we intend for the direct marketing code to only cover the current PECR rules until the ePR is agreed. Once the ePR is finalised and the UK position in relation to it is clear we will produce an updated version of the code which takes this into account as appropriate.

This call for views is the first stage of the consultation process. The Commissioner is seeking input from relevant stakeholders, including trade associations, data subjects and those representing the

interests of data subjects. We will use the responses we receive to inform our work in developing the code.

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

Or print and post to:

Direct Marketing Code Call for Views
Engagement Department
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

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

Please send us your views by **24 December 2018**.

Privacy statement

For this call for views we will publish responses received from organisations but will remove any personal data before publication. We will not publish responses from individuals. For more information about what we do with personal data please see our [privacy notice](#).

Questions

- Q1 The code will address the changes in data protection legislation and the implications for direct marketing. What changes to the data protection legislation do you think we should focus on in the direct marketing code?

Further examples of direct marketing, to make it easier to differentiate from actions taken in the course of conducting business that isn't marketing.
The changes to obtaining consent and withdrawing consent.
How the GDPR rights affect direct marketing.
How the changes address business to business marketing to individuals at corporate addresses and numbers, howsoever made, the contact being in respect of their employment, rather than their personal life.

- Q2 Apart from the recent changes to data protection legislation are there other developments that are having an impact on your organisation's direct marketing practices that you think we should address in the code?

X

Yes

No

- Q3 If yes please specify

Technology and uses of personal data are developing at a fast rate. In so far as possible the principles need to be very defined so developers and businesses are able to apply the Code to technologies and uses of data that cannot reasonably be in the ICO's scope when drafting the code.

Q4 We are planning to produce the code before the draft ePrivacy Regulation (ePR) is agreed. We will then produce a revised code once the ePR becomes law. Do you agree with this approach?

Yes

No



Q5 If no please explain why you disagree

Yes agree with this approach, given the uncertainty of timing of implementation of ePR.

Q6 Is the content of the ICO's existing direct marketing guidance relevant to the marketing that your organisation is involved in?

Yes

No

Q7 If no what additional areas would you like to see covered?

Q8 Is it easy to find information in our existing direct marketing guidance?

Yes

No

Q9 If no, do you have any suggestions on how we should structure the direct marketing code?

No. A general comment on ICO guidance, reported by our members, is that it has so much information it is hard for general website visitors to isolate and understand the exact guidance they need. This is also because the nature of data protection often requires businesses to exercise discretion and determine what is reasonable behaviour in the context of their operations. We and our members have found the direct marketing checklist very useful, so we suggest that this is published in an updated format.



Q10 Please provide details of any case studies or marketing scenarios that you would like to see included in the direct marketing code.

Our members are recruitment businesses. Fundamental to their businesses is the maintenance of up to date databases of candidates and client contacts and use of online resources such as jobboards and LinkedIn. A recruitment business needs to stay in touch with candidates and clients, to ensure their databases are up to date and to become aware of candidates searching and roles needing to be filled. This is not considered direct marketing in the industry, rather business activity and we advise our members to ensure that such contact is relevant, appropriate in frequency and volume. It would be helpful to understand the ICO's approach to industries such as recruitment and we would welcome the opportunity to discuss further with you.

Q11 Do you have any other suggestions for the direct marketing code?

About you

Q12 Are you answering these questions as?

- A public sector worker
- A private sector worker
- A third or voluntary sector worker
- A member of the public
- A representative of a trade association
- A data subject
- An ICO employee
- Other

If you answered 'other' please specify:



Q13 Please provide the name of the organisation that you are representing.

Association of Professional Staffing Companies (Global) Ltd

Q14 We may want to contact you about some of the points you have raised. If you are happy for us to do this please provide your email address:

Thank you for taking the time to share your views and experience.