

ICO call for views on a direct marketing code of practice



Information Commissioner's Office

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).

The new code of practice will build on our current direct marketing 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.

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.

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?

1. The impact of the right to erasure. (ICO and other (eg CAP Code) guidance already makes clear that suppression lists are the more effective way of dealing with do not market requests. It would be helpful to have a section specifically confirming that this is still appropriate in the event a customer makes an erasure request. 2. Impact of GDPR consent requirements on online marketing (in particular, need to identify every organisation relying on consent; need to be able to prove consent). It would be helpful if this looked at browser based marketing; in-app marketing; and in-game marketing. There are particular questions on in-game marketing about the distinction between contextual and personalised marketing (where marketing is displayed because you have played in a certain way, how should this be characterised?) 3. Impact of rules on children on direct marketing (for example, how to treat 13 - 15 year olds).

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?

Yes

No

Q3 If yes please specify

Would be helpful if the code tackled online advertising. Much has changed in industry since the ICO 2011 guidance

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

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?

Content is repeated in the current code and split about. This may make it harder to use for someone who is non-expert in the area

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

See answer to q1 - online marketing and in-game marketing; especially when dealing with children

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:

Bird & Bird LLP

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:

@twobirds.com

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