



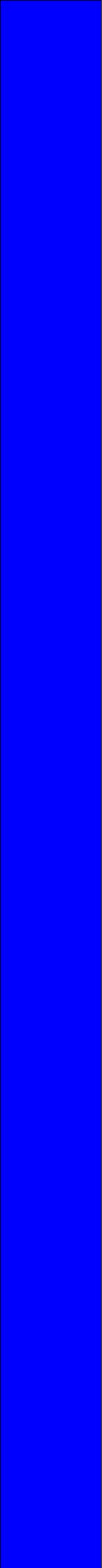
Ministry of
JUSTICE

ico.
Information Commissioner's Office

Framework Agreement

September 2011

Revised as of 1 September 2013 to take account of the commencement of relevant sections of the Protection of Freedoms Act 2012 under the Protection of Freedoms Act 2012 (Commencement No 8) Order 2013.



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Introduction

This Framework Agreement sets out the respective responsibilities of the Ministry of Justice (the Department) and the Information Commissioner (the Commissioner) to support the work of both organisations, and to ensure the Commissioner's independence, propriety and value for money.

The Agreement takes effect from 15 September 2011 and will not convey any legal powers or responsibilities. It will be reviewed at least every three years but the Commissioner or Department may propose amendments at any time and revisions can be made with the agreement of both parties.

The Department will arrange for copies of the Framework Document and any subsequent substantive amendments to be placed in the Libraries of both Houses of Parliament. The Framework Document will also be made available on both the Department's and Commissioner's websites.

Purpose of the Information Commissioner's Office (ICO)

The ICO's statutory duties

1. The ICO is the UK's independent regulator of the Data Protection Act 1998 (DPA), Freedom of Information Act 2000 (FOIA), Privacy and Electronic Communications Regulations 2003 (PECR), the Environmental Information Regulations 2004 (EIR) and the INSPIRE Regulations 2009.

The ICO's mission and strategic aims

Mission

- The ICO's mission is to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

Strategic aims

The ICO's strategic aims are set out in its rolling three year corporate plan which is published on the ICO's website.

Governance and accountability

Legal origins of powers and duties

2. The European Union's Data Protection Directive (1995) requires all Member States to establish an independent supervisory authority to regulate data protection legislation. The Information Commissioner's Office, previously known as the Data Protection Commissioner, carries out this function for the UK and its specific functions in this regard are set out in the DPA and its subordinate legislation. The ICO's functions were extended in January 2001 to regulate the FOIA, in 2003 to include the PECR, in 2004 to include the EIR and in 2009 to include the INSPIRE Regulations.

Status of the ICO

3. The Information Commissioner is a corporation sole (as set out in Schedule 5 of the DPA) and, under the terms of the EU Data Protection Directive, must be completely independent of Government.
4. The Information Commissioner is accountable to Parliament for the exercise of his statutory functions and the independence of his office is encapsulated in legislation.
5. In order that the Information Commissioner's necessary independence as a regulator is respected and demonstrated, while still remaining accountable to Parliament both for the exercise of his statutory functions and in respect of his Accounting Officer responsibilities, it is agreed that the Ministry of Justice and the Information Commissioner will:
 - pursue value for money in all ICO activities;
 - comply with all the requirements of Managing Public Money (for ease of reference the relevant sections of Managing Public Money are referred to throughout this document);
 - operate on the basis of a 'culture of no surprises' so that both parties keep each other informed of developments, but without needing to seek permissions other than those specifically detailed or referenced within this document; and
 - promptly supply any information reasonably necessary for monitoring purposes relating to financial management and value for money.
6. For Government's administrative purposes only the Information Commissioner is classified by the Machinery of Government and Standards Group in the Cabinet Office as an executive non-departmental public body (NDPB) and for national accounts

purposes the Information Commissioner is classed to the central government sector.

Ministerial responsibilities

7. The Secretary of State for Justice will answer for the ICO in Parliament given the Department's sponsorship responsibilities. However, the ICO may be called in its own right to give evidence before Parliamentary Select Committees.
8. The Department will inform the Commissioner of any changes in legislation or Government policy that may affect his Office.
9. Ministers of the Department will be responsible for answering Parliamentary Questions relating to the ICO.

MOJ Accounting Officer responsibility

10. The Permanent Secretary is the Department's Principal Accounting Officer and has designated the Commissioner as Accounting Officer for the ICO. The Principal Accounting Officer is accountable to Parliament for the issue of any grant-in-aid to the ICO. In particular he is responsible for:
 - a) the payment of the grant-in-aid to the Commissioner and any conditions attached to the grant-in-aid;
 - b) monitoring the Commissioner's compliance with those conditions; and
 - c) the steps taken to ensure that the financial and other management controls applied by the Department and the Commissioner conform to the requirements of good financial management and are appropriate and sufficient to safeguard public funds.

Information Commissioner's Accounting Officer responsibility

11. As Accounting Officer for the ICO, the Commissioner is personally responsible for safeguarding the public funds for which he or she has charge; for ensuring propriety and regularity in the handling of those public funds; and for the day-to-day operations and management of the ICO. In addition, he or she should ensure that the ICO is managed in compliance with the governance, decision-making and financial management provisions in Box 3.1 of Managing Public Money.

12. The Commissioner may delegate the day-to-day administration of these Accounting Officer responsibilities to other members of his staff. However, he may not assign absolutely to any other person any of the responsibilities set out in this document.

Reporting

Annual report and accounts

13. In accordance with provisions in the DPA, the ICO must publish an annual report of its activities with its audited accounts after the end of each financial year. The annual report and accounts must comply with the requirements set out in Managing Public Money and the Treasury's Financial Reporting Manual. The ICO will aim to do this before the summer recess each year, and make this publicly available on the ICO website.

Consolidated financial and performance report

14. The Commissioner must follow the requirements of Chapter 3 of Managing Public Money including quarterly finance and performance reports and will also advise the Department on relevant issues relating to information rights policy.

Internal audit arrangements

15. The Commissioner will be personally responsible for making suitable arrangements for internal audits, including establishing an audit committee in accordance with the Cabinet Office's Code of Conduct for Board Members of Public Bodies and the Treasury's Audit Committee Handbook. In addition, the arrangements for internal audit will be in accordance with the Government Internal Audit Standards.
16. The Commissioner will follow the standards set out in Managing Public Money and allow the Department's internal audit team to view all documents prepared by the ICO's internal auditors. Any such consideration by the Department's internal audit team will not include matters relating to the Commissioner's regulatory decisions.

External audit arrangements

17. The Commissioner will keep accounts as required by provisions in the DPA and in accordance with Government guidance. At the end of each financial year the Commissioner will

prepare a Statement of Accounts in such form as the Secretary of State may direct, with approval from the Treasury. The Commissioner will send the signed Statement of Accounts to the Comptroller and Auditor General (C&AG) on or before 31 August following the end of the year to which the statement relates or on or before such earlier date after the end of that year as the Treasury may direct. A copy of the accounts will be sent to the Department on the same date. The C&AG shall examine and certify any statement sent to him under this paragraph and lay copies of it together with his report thereon before each House of Parliament.

18. The C&AG will audit the Commissioner's expenditure and income; examine regularity and propriety; and certify and report on the Commissioner's Statement of Accounts. The Commissioner and the C&AG will lay before Parliament the Statement of Accounts and the C&AG's Report on it, usually with the Commissioner's Annual Report.
19. The Commissioner will send copies of all NAO management letters and correspondence relating to those letters, and of the Commissioner's replies, to the sponsoring branch of the Ministry of Justice for the attention of the Permanent Secretary.

Management and financial responsibilities

20. The ICO will follow the standards, rules, guidance and advice in Managing Public Money and any updates to that guidance on the spending of public money, referring any difficulties or potential bids for exceptions to the Department and other government-wide corporate guidance and instructions in the first instance.

Corporate governance arrangements

ICO Management Board Responsibilities

21. The ICO's Management Board is responsible for developing strategy, monitoring progress in implementing strategy and providing corporate governance and assurance. It will also manage corporate risks. The Management Board comprises members of the ICO's Executive Team and four non-executive directors. The Management Board will be supported by an Audit Committee consisting of two non-executive board members and a third independent member, and a Remuneration Committee consisting of two non-executive board members to be appointed by the Commissioner.

22. The Commissioner shall send to the Permanent Secretary the Audit Completion Report (including the management letter) produced by the NAO for each financial statement audit once considered by the Information Commissioner's own Audit Committee which will include responses to audit findings.

Corporate and business planning

23. Each financial year the ICO will develop a corporate plan, setting out its aims for the next three financial years. The ICO will also develop an annual business plan. This will detail the ICO's activities during the year ahead in support of the aims in its overarching corporate plan and will set performance targets. It will also include a review of performance in the preceding financial year. The annual business plan will also include a budget of estimated payments and receipts together with a profile of expected expenditure and of draw-down of any departmental funding and other income over the year. The corporate and business plans will be provided to the Department and other relevant government departments for comment. Approval of the plans is not required.

Risk management and insurance

24. The ICO will develop a risk management strategy and manage risks, including fraud, in accordance with the rules in Managing Public Money, Management of Risk: Principles and Concepts, and Tackling Internal Fraud. It should also take all reasonable steps to appraise the financial standing of any firm or other body with which it intends to enter into a contract.
25. The ICO should comply with sections 4.4 and annex 4.5 of Managing Public Money. In the event that an uninsured loss occurs or a third party claim is made and it is decided that the loss or claim should be met, the presumption is that the Commissioner will meet the cost from his existing allocation. Where the cost exceeds 5% of the Commissioner's total grant-in-aid, the Department will consider in consultation with the Treasury whether to make any additional funds available to the Commissioner.

Asset Management

26. The Commissioner will manage his assets in compliance with the requirements in Annex 4.8 of Managing Public Money.

27. Unless otherwise agreed, proceeds from the disposed assets will be paid to the Secretary of State in accordance with Annexes 4.8 and 5.2 of Managing Public Money.

Leasing and property

28. Before entering into any lease, the Commissioner must demonstrate that it offers value for money and that the ICO has sufficient resources to cover the future of the lease.
29. The Commissioner will not purchase for a premium of more than £2,000 for the life of the lease (as defined in accounting standard IAS 17 Leases) a leasehold interest in any asset without the prior approval in writing of the Department.
30. The Commissioner will obtain the written approval of the Department before entering into contracts to acquire or dispose of land (including leasehold interests in land).
31. In acquiring and administering an interest in property, the Commissioner must follow standard property investment appraisal techniques, consulting the Office of Government Commerce on best practice and the availability of property on the Civil Estate before acquiring space elsewhere.

Fraud

32. The Commissioner will maintain an effective system for the prevention, detection and investigation of fraud as specified in Annex 4.7 of Managing Public Money.

Budgeting

33. The ICO's corporate and business plans will be supported by three year income and expenditure projections and a detailed annual budget. These projections and budget will be provided to the Department and other relevant government departments alongside the draft corporate and business plans. They do not require approval.
34. The amounts of the grant-in-aid to be paid to the Commissioner for his freedom of information work will be determined by the Department in consultation with the Commissioner. In advance of each financial year, the Department will send to the Commissioner a formal statement of its financial provision, together with a statement of any change in policies affecting the Commissioner in the coming financial

year. The notified provision will be subject to Parliamentary approval and will form part of the Department's overall Departmental Expenditure Limit.

35. Once the Department has sent to the Commissioner a formal statement of its financial provision, and subject to any restrictions imposed by statute or agreed in this Framework Document, the Commissioner will have authority to incur expenditure without further reference to the Department, on the following conditions:

a) the Commissioner complies with the delegations set out at Appendix A of this framework;

b) the Commissioner complies with the conditions regarding the grant-in-aid; and

c) the Commissioner's overall expenditure is consistent with the plans contained in his annual budget provided to the Department.

Grant-in-aid

36. The Secretary of State may make payments to the Information Commissioner out of money provided by Parliament under Paragraph 8 of Schedule 9 to the DPA. This relates to any of the Information Commissioner's functions.

37. After consultation with the Commissioner the Department will pay to the Commissioner appropriate sums (the grant-in-aid) for his administrative costs and the exercise of his functions in relation to his non-data protection functions.

38. The Commissioner must satisfy the agreed conditions and requirements set out in this document, together with such other conditions as the Department may from time to time impose, in order to continue to be entitled to the grant-in-aid.

39. The ICO will comply with the general principle that there will be no payment of grant-in-aid instalments in advance of need. Cash balances accumulated during the course of the year from the grant-in-aid or other Exchequer funds shall be kept to a minimum level consistent with the efficient operation of the ICO. Grant-in-aid not drawn down by the end of the financial year will lapse.

40. To comply with Managing Public Money, the ICO will send to the Department, before the start of each financial year, a schedule setting out the dates on which it proposes that grant-in-aid payments should be paid to the ICO and the amounts it expects to draw down on each date in respect of current and capital provision. The ICO will update the schedule for grant-in-aid payments quarterly.
41. The grant-in-aid payments will normally be paid quarterly by the Department to the ICO on the basis of a written application signed by the ICO's Finance Director or by a person notified by him to the Department as authorised to sign on the Finance Director's behalf. The amount requested should not exceed the amount needed to meet anticipated liabilities within the period. Subject to approval by Parliament of the relevant Estimates provision, where grant-in-aid is delayed to avoid excess cash balances at the year-end, the department will make available in the next financial year any such grant-in-aid that is required to meet any liabilities at the year end, such as creditors
42. Applications for payments that take the cumulative draw-down to 5% or more above the profiled expenditure for the grant-in-aid must be countersigned by another designated officer authorised by the Department. This profiled expenditure would need to be accompanied by a detailed explanation of the specific cause for the variance and how the ICO intends to bring expenditure back within the profile where possible.

Data Protection Functions

43. Expenditure on data protection activities is financed through the retention of the fees collected from data controllers who notify their processing of personal data under the DPA. Data protection and freedom of information funding streams must be accounted for separately. The apportionment model sets out how funding must be separated when expenditure relates to joint services and what proportion must be drawn from each.
44. Any changes to the annual data protection notification fees will require secondary legislation subject to the negative resolution procedure. The Department will consult the ICO and relevant stakeholders on any proposed changes to these fees before bringing forward legislation.
45. Such funds as are necessary to meet any liabilities at the end of the financial year (such as creditors), or unspent funds up to a maximum of 3% of total annual notification fee income (which

ever is the greater), may be carried over to the following financial year. The Department must be informed in writing by 1st February of any planned carry over to the next financial year.

46. Any cleared funds in excess of the provisions specified at paragraph 45 must be remitted to the Department to be remitted to the Consolidated Fund at the end of each financial year.
47. The ICO will maintain a strict level of control and supervision over the receipt of data protection notification fees. All data protection fee income will be deposited in a bank account, set-up for the sole purpose of receiving data protection fees and will be used for no other purpose than expenditure on data protection functions.

Income from the Proceeds of Crime Act 2002

48. Money recovered from a confiscation order should be used to drive up asset recovery performance. This could include the prevention and detection of offences committed under Section 55 of the DPA, and education of data controllers and data subjects about the risks these offences pose.

Virement and variations from the budget

49. In relation to the grant-in-aid, the ICO will notify the Department immediately if at any time and for any reason it becomes apparent that an overspend of any amount or an underspend of 5% or more may occur.
50. Virement may take place only from the freedom of information grant-in-aid to the data protection cleared funds, and only up to an amount of £100,000. Amounts in excess of £100,000 will require the Department's approval, given with the consent of the Treasury.

Novel, contentious or repercussive proposals

51. As set out in Annex 2.3 of Managing Public Money, the ICO must obtain the Department's approval (where appropriate, dependent on consent from the Treasury) before incurring any expenditure for purposes which are or might be considered novel or contentious or have, or could have, significant future cost implications. This includes making any significant change in the scale of operation or funding of any initiative or particular scheme previously approved by the Department.

Capital provision and expenditure

52. The ICO will comply with any relevant controls on public sector expenditure unless an exemption is granted by the appropriate Government Department. A list of the delegated limits is contained at Appendix A of this framework.

Procurement

53. The ICO will comply with the rules governing procurement as set out in Annex 4.4 of Managing Public Money, international regulations and other relevant rules and guidance applicable to the ICO.

Other receipts

54. As a general principle the ICO will remit all miscellaneous receipts to the Department in accordance with Paragraph 9 of Schedule 5 of the DPA.

55. Exceptions to this general principle include:

- in year receipts received from the recovery of legal fees awarded by the Courts and Tribunals;
- charges levied from staff for car parking at ICO premises;
- Receipts under the DPA or FOIA as amended by Section 107 of the Protection of Freedoms Act 2012;
- receipts recovered from a claim made under POCA;
- Travel and subsistence costs recovered from external organisations; and
- Catering Receipts.

56. Any charges will be on a cost recovery basis. Any income generated resulting in profit in the pursuit of these activities will be remitted to the Department and then by the Department to the Consolidated Fund, consistent with Section 6.1.4 of Managing Public Money.

57. Income from the activities listed under Section 51 DPA and section 47 FOIA may be included in the ICO's budget and may be retained by the ICO. Any income from fees and charges not used by the end of the financial year, shall be remitted to the Department and subsequently the Consolidated Fund.

Banking

58. As Accounting Officer, the ICO is responsible for ensuring that the ICO's banking arrangements are in accordance with the requirements of Managing Public Money and are carried out efficiently, economically and effectively.

Financial investments

59. The ICO will not invest money speculatively.

60. The ICO will not make any financial investments without the prior written approval of the Department, nor will it aim to build up cash balances or reserves.

Borrowing

61. The ICO will observe the rules in Chapter 5.7 of Managing Public Money.

Lending, guarantees, indemnities and contingent liabilities (including letters of comfort)

62. Due to Parliamentary requirements, the ICO may not lend money, charge any asset or security, give any guarantee or indemnity or letter of comfort, nor incur any other contingent liability whether or not in a legally binding form without the Department's prior written consent, as set out in Annex 5.5 of Managing Public Money.

63. Any financial guarantees and indemnities given by the ICO must be adequately covered against undrawn resources.

Claims, write-offs, losses and other special payments

64. The ICO will follow the guidance on the treatment of losses and special payments set out in Annex 4.10 of Managing Public Money.

65. The Commissioner has delegated authority to write-off losses and make special payments as specified in Annexes 4.10 and 4.13 of Managing Public Money and Appendix A of this framework.

Gifts and bequests

66. The transparent reporting of gifts is required to assure Parliament that propriety has been respected. The ICO must

comply with annex 4.12 of Managing Public Money in relation to gifts and bequests.

Staffing

General

67. In accordance with the DPA, ICO staff are not to be regarded as servants of the Crown and are not classified as Civil Servants. As set out in the DPA, the Commissioner will have responsibility for the recruitment, direction, retention and motivation of his staff.
68. The Commissioner will ensure that the levels and structure of staffing is consistent with Government guidance.

Staff costs

69. The ICO will ensure that the creation of any additional posts does not incur forward commitments that will exceed its ability to pay for them and will have regard to overarching Government policy on recruitment.

Pay and conditions of service

70. The terms and conditions for the Commissioner's staff will be determined by the Commissioner in consultation with the Department.
71. The Commissioner will be responsible for his own pay bargaining and will have responsibility for authorisation of the pay systems for his staff. The Commissioner must prepare pay bargaining remit proposals in line with overarching Government policy and consult the Department and Treasury before pay negotiations begin.

Pensions

72. The Commissioner will make arrangements for pensions, allowances or gratuities for such of his staff as he determines in line with Paragraph 4 Schedule 5 of the DPA, as amended by Section 108 of the Protection of Freedoms Act. The ICO is responsible for the payment of contributions to the Principal Civil Service Pension Scheme from his grant-in-aid and data protection cleared funds.

73. The ICO will consult the Department and Treasury about any proposed alterations to pension arrangements or to pay arrangements which have implications for its pension schemes as required by Managing Public Money.
74. Pension arrangements will be prepared in line with existing Government guidance except in cases where an exemption from such guidance has been agreed with the Department and any other relevant Government departments.
75. Staff may take out personal pensions but the employer's contribution will normally be limited to the National Insurance rebate level.
76. Any proposal by the ICO to move from the existing pension arrangements, or to pay any redundancy or compensation for loss of office outside general arrangements for such payments agreed between the Department and the ICO requires the approval of the Treasury as set out in Managing Public Money 4.13.

Travel and subsistence

77. The ICO will have regard to overarching Government policy and guidelines in relation to travel and subsistence payments but will set his own policy.

Openness

78. The ICO will have regard to Government transparency initiatives aimed at increasing public sector accountability which go beyond the requirements of current information rights law.

Breaching the terms of this agreement

79. In the event that any of the requirements in this framework are breached, the ICO or the Department will advise the other immediately in writing and advise on the corrective or preventative action being taken.

Appendix A – Schedule of delegated authorities (information current as at the date of publication of this document)

These delegations must be read against the general provisions set out in this Framework Document.

Delegation from MoJ	Limits that apply
Contracts for administrative expenditure	As set out in the Public Contract Regulations
Capital expenditure	MoJ agreement required for expenditure over £1m.
Advertising and marketing spend	New contracts for the supply of government advertising and marketing services over £25,000 in value must be procured through approved Government frameworks.
ICT Expenditure	Consistent with HMT guidance, new ICT contracts, contract extensions / modifications above a value of £1m must not be signed without specific agreement of the Treasury.
Acquisition of lease hold interests	MoJ agreement required over £250,000
Consultancy spend	MoJ agreement required for new contracts over £20,000 in value.
Disposal of fixed or leasehold assets	MoJ must be notified of realisations of £20,000 or above.
Write-off of claims for monies due to the ICO and abandoned claims on third parties.	MoJ agreement required for all write-offs in excess of £50,000.
Charitable donations	MoJ agreement required for total annual donations exceeding £1,000
Proposals for making gifts of an unusual nature	MoJ agreement required for expenditure in excess of £250
Special Payments including extra contractual, ex gratia and compensation payments, extra statutory and extra regulatory payments.	MoJ agreement required for all payments exceeding £50,000. Regardless of value any case must be referred to the MoJ if it: <ul style="list-style-type: none"> 1. is novel, contentious or gives rise to important questions of principle 2. creates unhelpful precedents or could cause repercussions for other departments or agencies 3. casts major doubt on the effectiveness of the internal systems of control



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