

Regulatory Policy Methodology Framework

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Executive Summary

It is important that we have an approach to regulatory policy making that delivers evidence-based decisions that focus on achieving clearly stated regulatory outcomes.

The framework describes what we mean by regulatory policy in the ICO, the context in which the ICO operates, and the different tools and resources we have available to support policy makers. It is non-prescriptive and is designed as a guide to good practice for you to apply flexibly.

The framework contains 7 steps to good policy making. In reality, you may find yourself moving through the steps in any order, or working through them multiple times to develop and improve policy iteratively. You should use the framework as a flexible reference guide to help you to explain the reasons for your decisions, and demonstrate how these are supported with relevant and reliable evidence. The steps are:

1. Identifying the issue;
2. Research and analysis;
3. Develop policy options;
4. Consultation (formal and informal);
5. Recommendation and decision;
6. Implementation;
7. Evaluation.

For each step, we describe the questions you should be looking to answer, and where you can find help, support and sources of evidence. We've included guidance on how to assess the impact of your policies on people and the wider economy, and links to resources on the web that provide further information and good practice. We have also included a framework that articulates the harms to individuals and wider society that, as a regulator, we seek to prevent or mitigate.

The framework is a starting point for wider work to develop and support policy professionals in the ICO. We will update it periodically, and feedback from those applying it to real-world issues will be a vital part of continuing to improve it.

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Purpose of this Document

This document is an important part of your toolkit for reaching better, evidenced, outcome-focused decisions. It describes the tools, techniques and processes we need to identify an issue and develop the evidence and analysis to underpin decision making. This approach underpins effective regulation and our fulfilment of our statutory role. It brings our approach to policy development and impact assessment (IA) together into one document, recognising that the process of assessing options and impacts is integral to developing policy and reaching robust decisions.

It is designed to be a flexible and non-prescriptive tool and should be used proportionately. While it can be helpful in helping shape our thought processes and approach in day to day decisions, it is particularly important that the guidance is used in the more complex, novel or contentious issues: for instance the types of issues on which you would seek the views of the Policy Board.

An evidence-based and outcome focused approach to policy making is an important tool for ICO to meet its regulatory obligations set out in the [Deregulation Act 2015](#) and the [Regulators' Code](#).

The framework is distinct from the Regulatory Action Policy (RAP). The RAP sets out ICO's various powers and provides clear and consistent guidance on how they will be used.

Who is this for?

The document is aimed at all ICO staff working on or in support of policy development, or for those interested in a career in policy. We will be working with the policy profession to ensure staff have the skills and training available to ensure they are able to put the framework into practice, and will be engaging with the policy profession to update and refine the framework as staff continue to use it.

The principles in the framework apply to all kinds of policy making. However, the process set out in this document is most suited to larger, longer term policy projects. We recognise that ICO policy professionals sometimes also need to make policy decisions quickly, and future products will support colleagues to apply the principles in rapid, reactive policy work where a fast turnaround is needed.

Regulatory Policy making at the ICO

What is Policy and Why do we Need it?

Policy is key to making the ICO's regulatory priorities a reality. Policy is built on understanding issues which require the ICO to develop a new approach, or change its existing approach. Policies can vary depending on circumstances, but will often entail either specifying a course of action, or outlining rules or principles to be applied. Policy should generally aim towards solutions that deliver a long term benefit that would not be achieved if the policy was not in place. ICO needs policy professionals who are skilled at:

- Understanding and analysing evidence from different and sometimes contradictory sources;
- Understanding the political, legal and regulatory contexts and the impact of public attitudes;
- Understanding how things work and considering the practicalities of delivery from the beginning;
- Articulating a vision for success and understanding how we will know if we have been successful.

Policy needs to be underpinned by evidence. This can be from a range of internal and external sources, including subject matter experts, delivery partners and end-users.

Policy is therefore distinct from, for example, work on a complex individual case that can be resolved by applying existing rules, principles or guidelines.

The Context for Regulatory Policy Making at the ICO

ICO policy making is conducted within the context of our relationship with the legislatures and governments of the UK.

Role of parliament

- The UK Parliament enacts laws that contain the legal obligations that ICO is responsible for enforcing, and through which the ICO derives its powers and duties.
- ICO is accountable to the UK Parliament.

Role of government

- The Information Commissioner must be completely independent and free from external influence. The relationship between the ICO and government is set out in the Management Agreement (MA) between ICO and the Department for Digital, Culture, Media and Sports (DCMS) in consultation with the Commissioner;
- The UK government (and the devolved administrations on certain matters – see annex A) sets public policy based on a democratic mandate;
- The UK Government and the ICO can mutually agree new objectives or areas of work, as long as these do not undermine the ICO's current powers or duties;

- The UK Government can propose changes to the regulator’s powers and duties through legislation, which must be passed by the UK Parliament;
- ICO maintains relationships with the devolved administrations and has offices in Wales, Scotland and Northern Ireland.

Role of the ICO

- The ICO is responsible for independently applying regulation within the framework of legislation. Most notably this includes the Data Protection Act 2018 and the UK GDPR;
- The ICO is also responsible for ensuring compliance with regulations that enable the public to access information held by public bodies. These include the Freedom of Information Act 2000 (FOI), the Environmental Information Regulations (EIR), the Re-use of Public Information Regulations (RPSI) and (in some limited cases) [the INSPIRE regulations](#);
- The ICO also has a duty to have regard to the desirability to promote economic growth, under section 108 of the Deregulation Act 2015;
- Delivering against our responsibilities can include needing to decide how to balance trade-offs between competing priorities, how to interpret legal provisions and identifying the challenges and opportunities of emerging technologies and business models. Making these types of decision within our legislative remit is the essence of regulatory policy;
- The independence of the regulator is important as governments are also subject to data protection regulation and the ICO must be able to discharge its duties fairly and without political interference. This is required in Article 52 of the UK GDPR;
- ICO cannot itself legislate (or disregard legislation), but can make recommendations to governments (including the UK government and devolved administrations) if we think there is a good case for legislative change. The government’s ability or willingness to make such changes, and the timescales involved will, in such cases, determine some of the constraints on ICO’s policy making.

If ICO is to effectively exercise its independence, it must be able to make evidence-based policy decisions within the legislative framework determined by the government. This includes decisions about the advice and guidance we provide to governments and organisations; how we respond to complaints raised by individuals or civil society groups; and how we understand and analyse the data protection, information rights and/or FOI implications of new and emerging issues, for instance in the context of new data processing practices or data-enabled business models.

The Regulatory Policy-Making Process

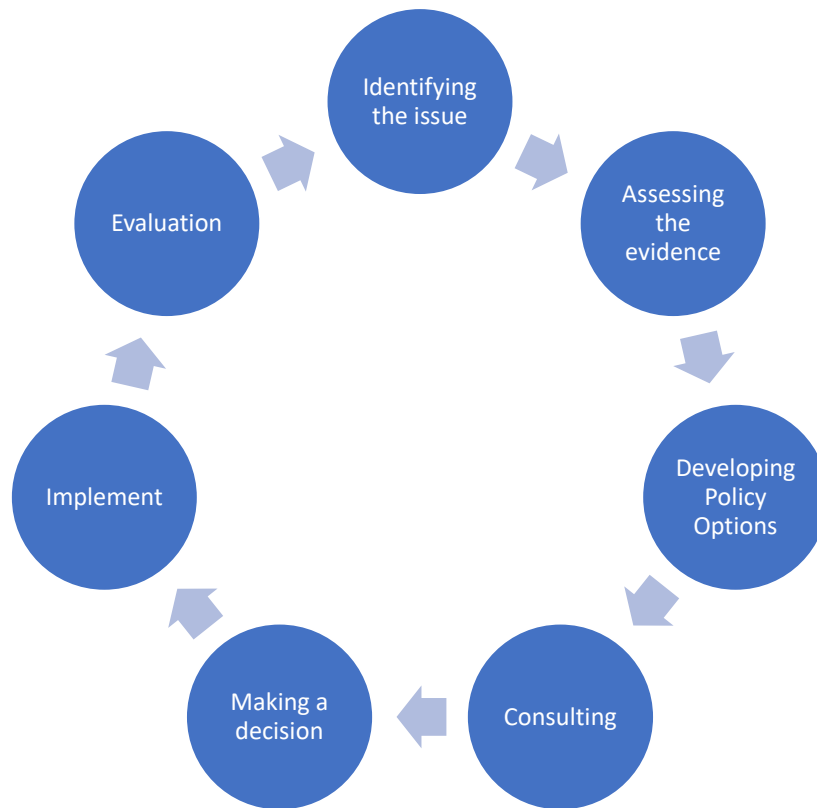
Policy making benefits greatly from a structured approach to identify problems, develop options, make decisions and review and evaluate the impact. We have set out a seven stage framework for policy making at the ICO. It is important to note that the process is rarely linear, and many of the stages will overlap and be

revisited as the process progresses. The important thing is to be able to show the rationale behind decisions that ICO makes by answering the following questions:

1. **Identifying the issue.** What is the problem we are trying to solve or the opportunity we are trying to influence? What do we know about how this is manifesting now and how it is likely to change in the future? What is the regulatory outcome that we want to achieve? What might be the impacts of the solution or intervention?
2. **Research and Analysis.** What does the evidence and analysis say about our understanding of the problem or opportunity? Is there evidence of harm now or in the future, and which groups or organisations are most impacted? What does the wider context tell us about the sensitivity of the issue or how effective our policy-making will be? What can we learn from previous policy-making and evaluation evidence?
3. **Developing policy options.** What are the different approaches we could take to the problem? What policy tools do we have available to us and what impact will these have? Are we sure that our options are compliant with our legal and regulatory framework? To what extent does each option achieve the desired outcomes and objectives? What does success look like?
4. **Consulting.** Have we consulted effectively with stakeholders, including ICO colleagues, government, other regulators (including those in other countries for international matters) businesses, civil society and the public? Do they agree with our analysis of the problem? Do they have conflicting or confirming evidence? What are their views on our proposed policy options? What are their views on the likely impacts?
5. **Making a decision.** Have we effectively presented the options, taking into account evidence and feedback? Where should the decision be signed off? What do we know about the likely impacts?
6. **Implementation.** What is our implementation plan? Are we confident we have the resources to implement this effectively? What is our timeline?
7. **Evaluation.** What is the process for reviewing and measuring effectiveness? Do we need to revise our approach? Do we have any recommendations or learning points for future policy-making?

Annex A provides a high-level summary of which areas of government policy apply UK-wide and which ones are devolved.

We have illustrated the process in the diagram below. This is, of course, an idealised representation as noted above, and you should view the following chapters as a set of tools that can be applied to different situations, rather than a sequence to be followed rigidly. The rest of this document describes each stage of the framework in more detail.



Things to remember:

Policy making is an iterative process. It is best done collaboratively. We should constantly review and re-evaluate our policy interventions to make sure they are achieving what they set out to, and ensure we are seeking input both internally and externally. While the framework is a useful guide to the process it will not always be so linear and you may need to respond flexibly to new evidence or to changing organisational or stakeholder priorities. You may also need to repeat the seven steps, or parts of them, as your evidence and understanding of a regulatory problem grows.

The guidance should be used proportionately: the level of analysis and evidence you need to support a decision should depend on the severity, urgency or consequences arising from our decision.

Use the framework flexibly: you may find some stages of the 7 step process may be less relevant to an issue than others. Take what is useful from the framework. The key point is that you should cover the *substance* of the seven steps: this framework is useful if it helps you to explain the reasons for your decisions and demonstrate how this is supported with relevant and reliable evidence.

Support: There are links throughout the document to additional background information from ICO and elsewhere, and to the ICON pages for teams that you can approach for help on aspects of the policy framework, or on particular

topics. The Regulatory Futures Directorate are co-ordinating work to develop the policy profession.

Approaching Regulatory Policy Iteratively

As noted above, policy making in the real world very rarely feels like a neat, linear process. This is particularly the case if you are working in a dynamic environment in which the political, economic, social or technological context is changing rapidly. You may also find yourself under time pressure or faced with a problem that requires innovative thinking to solve.

We can apply good practice from the world of design and software development to help with all of these challenges, and to ensure that we implement our policies and associated services in ways that work for the people that are affected by them. User research offers techniques to ensure that our policies are centred on people's real world needs, and prototyping can speed up and improve decision making, implementation and evaluation. In effect, these techniques involve moving through the policy process many times in rapid succession, maintaining focus on the needs of those most affected by the policy, and allowing you to rapidly adapt to changing circumstances. The [Cabinet Office Open Policy Making toolkit](#) provides guidance on how to use these techniques, and is helpful additional guidance if you are making policy in these circumstances. We have included references to relevant parts of the toolkit throughout.

You may also find the [OECD Observatory of Public Sector Innovation](#) helpful. It is designed to support policy makers tackling policy problems that are complex and interconnected and includes a wide range of international examples that focus on the ways that regulators can be innovative and help to enable innovation.

The Scope of Regulatory Policy in ICO

Policy can mean different things to different organisations. ICO exists in a different strategic, political and legal context to a government department, so the definition and scope of policy within ICO will be different. However, many of the tools, techniques and approaches to policy making are transferable between different contexts.

In ICO, policy covers a variety of activities, ranging from the reactive: deciding what our position is on a new technology or a novel use of personal data, to the proactive: anticipating future information rights challenges and setting out recommendations and expectations. It includes managing our key relationships, such as those with government, industry or with data protection authorities in other countries.

Good policy-making relies on effective collaboration. For example, legal services can provide in-depth interpretation of the law to help establish constraints and opportunities offered by current legislation, or an assessment of legal risk attached to a particular policy option. Making good policy includes the ability to

ask an expert the right question, and to incorporate the expert view in the context of the bigger picture.

Collaboration often extends outside ICO, and we increasingly find ourselves working alongside sector-specific regulators such as OFCOM or the Financial Conduct Authority where a policy has implications that cross legislative boundaries. We may also partner with other organisations, including industry bodies, for example to develop and deliver a standard.

To do this effectively, ICO must make decisions that strike the right balance between a number of factors that may be in tension. This will sometimes mean balancing the rights of individual citizens or communities with the wider economic and societal benefits of data processing.

Examples of recent policy activities in ICO include:

- Development and impact assessment of the statutory [Children's Code](#) for online services used by children, and the Data Sharing Code;
- Developing a framework for assessing the likelihood and severity of data protection harms;
- The "[Outsourcing Oversight](#)" report, which made recommendations to extend the reach of FOI and ensure support for information rights in the modern world.

All of these examples required consultation with internal and external stakeholders and subject matter experts, and an assessment of a large and complex body of evidence across multiple sources.

The Process in Detail

Step 1: Identifying the Issue

The ICO identifies Data Protection and Information Rights problems on both a proactive and reactive basis. We use various sources of information to identify issues that we think require us to take action. The purpose of this first step is to describe what we think the issue is, what we already know about it and where there are gaps in our knowledge or evidence.

The Open Policy Making Toolkit section on "[Diagnosis](#)" contains a number of techniques that will help you gather the right information.

You will need to stay in touch with developments on issues you are working on as a policy professional. ICO has access to media aggregators such as Mlex and Dods, and other subject-specific subscription resources. For advice, you can contact:

- The Knowledge Service for access to journals and subscriptions;
- The Communications team to be added to media monitoring distribution lists

Sources include:

- Information we hold internally that comes from our regulatory activity. This includes FOI/DP casework, FOI appeals, personal reports of data breaches, helpline queries, regulatory audits, investigations and other activity;
- Evaluation Evidence – Evidence from evaluation and impact assessment of relevant past policy making, both internally and externally;
- Intelligence – ICO's intelligence gathering and analysis may identify threats or risks that require a wider policy response;
- Research using external information sources, including Horizon Scanning used to identify emerging issues that may require a response from ICO in the future;
- ICO regions – substantial elements of public policy are devolved to Wales, Scotland and Northern Ireland. Our policies must always take account of the impact on devolved administrations, and at the same time, region-specific issues may arise that need a policy response;
- Our stakeholders – civil society organisations will raise issues with us. We also engage proactively with government, industry and academic researchers.

There are a number of teams within ICO that can help you to identify or better understand issues arising from both ICO activity and stakeholder concerns. You can find links to relevant information on ICON in the "Useful Links" supplement to this document:

- The Insight team explores issues and themes which impact on information rights. The team produces thematic reports containing recommendations

based on analysis of data from a variety of external and internal data sources;

- The FOI Policy and FOI Complaints teams can help to identify trends and issues relating to the exercise of FOI rights and how public bodies respond to requests;
- The Knowledge Service can help with any questions about the application and interpretation of existing policy positions to specific cases/concerns/enquiries. They also manage access to journals, standards and other sources of information to support policy development.
- The Intelligence team identifies current or emerging risks to inform ICO's overall strategy and produces and manages the Strategic Threat Assessment;
- The High Priority Investigations team focuses on particularly novel or intrusive issues that present the biggest risk to the public;
- The ICO Regions teams manage relationships with the devolved administrations and provides advice on regional implications of policy options;
- The Relationship Management Service coordinates engagement with organisations presenting the highest data protection risk, and also engages with influential 'umbrella' organisations which can extend and amplify the ICO's reach into key sectors;
- The Digital Economy Team manages our relations with large technology companies ;
- The Parliament and Government Affairs team manage our relationship with the UK administration (including ministers, departments and wider government);
- The Economic Analysis team offers support with impact assessment, evaluation and understanding harms;
- The Technology and Innovation (T&I) team provides support with understanding the impact of new and emerging technology on data protection and information rights.
- The International Team monitors overseas developments in the ICO's regulatory priorities and coordinates our international engagement to promote our policy views.

Scoping the Issue

The first step is to identify the scope of the issue, and to understand whether or not it requires a policy response. You should think about the material impact of the issue, scale, timescales, demographic impact, vulnerability of affected groups and geography (particularly if your issue involves a devolved matter such as public health).

This will require some initial research and potentially some early consultation with stakeholders, for example undertaking [User Research](#) to get an early and rapid indication of how people are affected by the issue (this should be proportionate to the issue and is not always required). Working through the following questions will help you to summarise what you already know and where there are gaps in your evidence:

- First and foremost - what data protection or information rights **harms** is the issue associated with? ICO's approach to understanding harm is explained in the **taxonomy of harms** guidance (see below), but at a broader level it is important to consider whether there is :
 - A significant amount of complaints or queries regarding an issue that is causing, or has the potential to cause, harm
 - A small number of complaints or queries that indicates a more systemic issue that is or could be causing harm
 - An emerging issue or technological development identified by horizon scanning that might present data protection or information rights concerns;
 - Intelligence about an issue that is not leading to complaints or queries, but has the potential to in future (i.e. an emerging issue overseas, or a domestic issue that is invisible to data subjects and/or controllers)

(**Note:** if none of the above apply - it may not be proportionate to progress a policy development process at this time);
- Can the issue be resolved by an existing policy tool (e.g. the application or minor clarification of current guidance, or exercising existing powers)? If so, it probably does not require a policy response;
- What is the **cause** of the issue? What **sustains** it?
- **Who** is affected? Are any groups of people affected disproportionately?
- What **services** or **markets** are affected? How wide ranging are the impacts?
- What **other consequences** does the issue have? What is the impact beyond data protection? Are there wider societal harms, or issues of fairness and ethics to consider?
- Is ICO best placed to take action on the issue? Do we have the relevant tools, expertise and legitimacy to influence the outcome? Do we need to work with other regulators, public authorities, professional, trade or representative bodies?
- Is there a defined process or procedure through which ICO can act?
- Is the issue time-sensitive?
- If the issue is technology-driven, do the consequences arise from a novel use or combination of existing technology, or is the technology itself new?

Defining Regulatory Outcomes

Once you have considered the above questions, you should think about regulatory outcomes: what is ICO ultimately aiming to achieve by acting on a particular issue? Has the commissioner or ET already expressed a view? You should ensure that outcomes align with:

- ICO's Regulatory Priorities;
- The Regulatory Action Policy – this is currently under review.

Alignment with wider policy

Although not necessarily a deciding factor, the wider policy context should be considered. Is there any relevant government policy that aligns with or clashes

with the proposed intervention? Are there any relevant considerations to be made of other regulators or legislation outside of the ICO's remit?

Useful Tools and Guidance

ICO Taxonomy of Harms

Prevention or mitigation of harm is a fundamental purpose for a regulatory body. Harm, from ICO's perspective, can refer to detriment suffered by individuals, or to societal harms with collective consequences. Harms can also result when individuals or groups are prevented or impeded from asserting their information rights (e.g. a lack of transparency around how data is processed or inability to hold a public body to account). It can be difficult to quantify data protection and information rights harms. ICO has therefore adopted a non-exhaustive taxonomy that provides illustrative examples of the full range of harms (see Annex B). More detail on how to take harms into consideration is provided in the next section on Stage 2.

PESTLE Analysis

A helpful way to break down complex issues is to look at their impact on a number of important domains, called PESTLE Analysis. The domains are:

- Political
- Economic
- Social
- Technological
- Legal
- Environmental

The Foresight team within Regulatory Futures and Technology and Innovation can provide advice and support for PESTLE analysis. You can find more information and some useful templates on the [CIPD PESTLE Analysis page](#). The ICO Regions team can often provide additional insights into Political, Social and Legal matters in particular.

Policy Board Decision – Issue Note

The issue identification process may be the first part in a wider project or piece of work. However, in some cases you may be unsure whether the issue you have identified requires further analysis. In these circumstances you could choose to bring an issue note to the Policy Board, setting out our current understanding of a policy issue. It should describe what we already know, where the potential risks lie, whether there are competing interests that we need to reconcile, and any views on the likely time horizons for the issue. The role of this paper is to:

- Test with Policy Board whether the articulation of the issue and associated risks and trade-offs is accurate;
- Get Policy Board's view on whether further development of this issue is required to allow you to prioritise and allocate resource appropriately.

Where further development is not required, the paper should be finalised, incorporating any feedback from Policy Board, and circulated to SLT and the policy profession for further cascade where appropriate.

Step 2: Research and Analysis

Once we have decided that an issue requires a policy response, the next stage is to understand it in more depth and to gather and analyse the evidence that ICO needs to decide the best course of action. Our focus at this stage is to fill in the evidence gaps we have identified, and build the evidence to underpin our understanding. Specifically, we need to understand in more depth:

- What **harm** is resulting, or might result from the issue. This involves building the evidence base regarding:
 - Who is affected and how does it manifest?
 - What is the scale of the harm?
 - How can the harm be measured and assessed? ;
 - What is it about the issue that **causes harm**? What are the **effects and consequences** of harm?
- What **causes** the issue, and what are the **drivers** that sustain, amplify or mitigate it? Is the issue a new problem we must solve, or have we identified an opportunity to make improvements?
- What is the context in which the issue takes place? Are the affected groups particularly affected by the issue or the proposed intervention? Do they have strong views about them?
- Which causes and drivers are relatively the most important?
- Which **stakeholders** are most affected by the issue, and what are their views?
- What level of **public awareness and understanding** is there about the issue, and do different groups have different views? Is the issue likely to receive public and media interest?

The Open Policy Making Toolkit includes a [wide range of techniques that can help you frame your research questions](#).

Planning Research and Analysis

You should consult with your Group Manager, Head of Department and/or Director to agree how research and analysis will be delivered. Timing will depend on the complexity of the issue, and any deadlines or other time-critical aspects associated with it.

Make sure that you allow as much time as you can to identify and consult with stakeholders and experts.

Analysing Harm In Detail

You already considered what harm is associated with your policy issue as part of Step 1. When thinking about harm in more detail, there are a number of key dimensions to consider:

- **Likelihood and Severity:** harms can be measured by combining the likelihood that they will have an impact on either a general population, or on specific groups within it, and severity – the breadth and depth of the likely impact;

- **Breadth and Depth:** severity can be further understood by considering breadth (how many people do they affect?) and depth (how serious is the impact?)

Harms can be **diffuse**: an issue that affects many people may have only a small effect on individuals, but a large, cumulative effect on society. The impact of harm may not be felt equally: the brunt of a particular harm may be borne by particular groups or communities.

We may be **reacting** to harm that has already occurred, or acting pre-emptively and proactively to **prevent** or **avoid** harm that we believe is at risk of occurring.

Your aim should be to gather evidence to answer the following questions:

- What type of harm does the issue cause?
- Has harm already occurred? If not, what evidence do you have that there is a risk of harm?
- Who is affected?
- Does everyone affected suffer the same type of harm? If not, why?
- Are some stakeholders better able to mitigate or avoid the harm than others?
- Does different stakeholders' perception of harm affect their behaviour (for example are some stakeholders more or less willing to use a service)?
- Are there different views about the appropriate balance between mitigating harm and any trade offs that may require?
- How can the harm best be measured or expressed?
- Are any other organisations planning or taking action to prevent, mitigate or avoid the harm?
- What assumptions have you made? How are your assumptions justified?

Analysing Benefits

Some issues and policy interventions may focus on opportunities to achieve benefits, as well as or instead of preventing and avoiding harms. A similar approach should be taken as with harm and the same questions should be asked in gathering evidence on benefits.

What are the causes and drivers of the issue you have identified?

Causes and drivers are the factors that create or sustain the issue you have identified. Most issues will have more than one factor behind them and each factor will have a different degree of influence on the issue. Understanding this is critical to understanding what our options are for taking action.

Mapping techniques can be helpful in visualising how the factors that influence an issue interact with both the issue itself, and with each other. Systems Mapping is one such approach used in government ([see an example here](#) of how it can help to visualise complex problems). Regulatory Futures can explain more about how you might apply this. Systems mapping may be scaled up or down in complexity to match the issue.

When considering causes and drivers, you should ask yourself:

- What factors are causing or sustaining the issue?
- Are the issue and its causes new, or have they been in place for some time?
- Of the causes you have identified, which are the most important?
- How do the issue and its causes affect our stakeholders, including data subjects and the wider public?
- Does ICO have the ability to take action on any or all of the causes, or are they outside our remit?
- What sectors of the economy does the issue impact the most?
- Could we address the issue more effectively by taking joint action with other regulators – for example, does it affect a particular industry sector?
- How do Data Protection Authorities in other countries approach the issue? Can we learn from them? Has the issue been discussed by international bodies of which ICO is a member, such as the Global Privacy Assembly?

Open Source Research

Much of the research that ICO carries out uses **open sources**, that is, sources of information and evidence that are publicly available, including social media activity by individuals or groups. It is very important that open source research is carried out in accordance with ICO's Open Source Research Procedure. Failure to observe the legislative and good practice requirements for research may prejudice the outcome of investigations or other casework.

This is particularly important when the issue that you are examining is pertinent to ongoing investigations or casework. The Open Source Research Procedure must be used in conjunction with this document and the procedure must be followed for any open source research conducted.

Evidence gathered through research provides the basis to decide our policy position on a particular issue, and to develop options for taking action.

Desk-based Research

This should include a review of existing resources such as:

- Our existing research and knowledge – the Knowledge Service can help with this;
- Advice from legal services, in particular to ensure that we understand how the existing legal framework and our powers and remit apply to a given issue;
- Thematic reports from the Insight team;
- Intelligence – you can contact your directorate's Intelligence Champion for support, or make a research request if you need intelligence from multiple sources;
- Evaluation Evidence – evidence from evaluations and impact assessments of relevant past policy making, both internally and externally;
- Reporting from operations (such as Kepler and Foresight in the case of COVID-19 related issues);
- Consultation with ICO Regions to identify any region-specific aspects of the work.

You should also review external sources. The Knowledge Service has access to a variety of tools for media searches and access to academic and professional resources, and can advise on how to find and use them.

- Mainstream and specialist media reporting (you can use search and aggregation tools that ICO has access to such as Mlex and Dods to help with this);
- [Grey literature](#) including corporate reports and white papers, market research, research from civil society groups and think tanks;
- Academic literature – via the Knowledge Service and services such as [Google Scholar](#);
- Any relevant court or tribunal cases (interpreting the wider implications of judgements may form part of your work with legal services).

Media reporting and grey literature are likely to reflect the agenda of the people who produce it. Academic literature is often (though not always) rigorously peer-reviewed, and tends to be more objective. However you should never assume any source of information is free from bias.

Commissioned research (optional)

The ICO has a specific budget for research to be commissioned on larger, significant issues.

Where the issue is widespread and significant, dedicated research to inform the development of our policies may be beneficial. The outcome of the research can then feed into possible solutions. It may also flag up other policy issues which then need to be assessed via this overall process.

Commissioning external research needs careful planning, and it is important to be clear about what questions you want the research to answer. There are many different types of research, which fall into two broad categories: qualitative and quantitative. The type you choose will depend on the evidence and insights you need.

Quantitative research focuses on numerical and statistical data, for example a large-scale survey. Key considerations are around your sample (the people or organisations that respond to the survey) – how large is it? Is it representative of people affected by the policy issue, or of the broader population? What questions will you ask? How will you analyse the data? How will you report the results?

Qualitative research focuses on exploring or validating a hypothesis with a smaller sample. It is not about generating numerical data. Structured one-to-one stakeholder interviews or focus groups are types of qualitative research. Deliberative research is a type of qualitative research where groups of people are providing with more information about an issue through the research process to assess whether their opinions change as they learn more. Whilst small samples are not representative of the population at large, qualitative research allows you to explore issues in more depth and is useful either as a complement

to quantitative research or where understanding the nuance and complexities of public views is important.

The [Market Research Society](#) (MRS) offers a variety of resources, including a [guide to working with market researchers](#) which summarises the different market research techniques. If you are commissioning your research, it will help to understand how to frame your research questions and work with suppliers.

You will need to make sure that you follow procurement rules when you commission research, and consult with information governance to ensure that ICO maintains its own information rights compliance when carrying out research. It is always advisable to engage with the [Procurement and Finance Team](#) early on to ensure that you follow the correct procedure.

You will also need to think about the data protection implications of collecting, using and potentially publishing the evidence gathered during research. Please contact Regulatory Futures for further advice and information on available budget and resources.

Next Steps

Once you have gathered evidence to demonstrate the problem that you are trying to solve, what causes and drives it and the harm that results (or might result), the next stage is to use that evidence to develop options for ICO to take action. You may also want to think about consultation – a call for views, or call for evidence could provide valuable additional insights and perspectives on your research findings. The following sections contain more detail on these steps.

Step 3: Develop Regulatory Policy Options

The next stage is to develop a position on the issue, and our options for taking action. Our **policy position** on any given issue articulates what ICO thinks about the issue, why we think it needs to be addressed, and our desired objectives and end state. In effect it is a summary, based on evidence, of the steps we have undertaken so far.

This should not be done in isolation. The Open Policy Making Toolkit offers a wide range of techniques for [collaborating with stakeholders to generate ideas](#). You may also want to get some real-world evidence to help options analysis by using prototyping.

Policy Options represent the range of potential actions that ICO can take to address the causes or drivers of the issue, or mitigate its harms in order to achieve our desired outcome.

Options Analysis considers the costs, benefits, risks, advantages and disadvantages associated with each option as well as their contribution to the overall objectives.

Developing a Regulatory Policy Position

Answering the following questions will help you develop your policy position:

- What are we trying to achieve by our intervention, and how will we know if we have been successful? Think early on about how you will review and evaluate the impact of our intervention (see the section on Review later) and be mindful that external stakeholders (such as government, data controllers and interest groups) will judge our policy options and interventions in the context of the harms we have evidenced;
- Consider setting out a list of critical success factors upon which to assess each of the options (see paragraph 4.27 of [HMT's Greenbook Guidance](#))
- How do our objectives address the causes and drivers of an issue, or the harms arising from it?
- What legal or regulatory duties or obligations affect our choice of objectives?
- How well do our objectives align with the Information Rights Strategic Plan?
- How might ICO's objectives be perceived by our key stakeholders, such as news media, UK government, devolved administrations, local government and consumer and industry groups amongst others, and how do we want to influence them?
- Does the issue have international implications? For example, does it entail transfer of personal data between countries?
- How might the different options be implemented? (e.g. What is realistic timeframe for implementation? Should there be a transition phase whereby compliance with the policy intervention is voluntary rather than mandatory? Should there be thresholds that determine who a policy intervention applies to?)

Policy Board Decision – Approach Paper

At this point, and before moving to develop detailed policy options, you could consider submitting an **Approach Paper** to Policy Board. An approach paper builds on the Issue Note by setting out an intended approach to reach a proposed policy position.

It also provides an opportunity to outline the evidence gathered during research and analysis, particularly around harm, in greater detail, set out how you intend to engage internal/external stakeholders and highlight the relationship to other relevant work.

Developing Options

Policy options outline in detail the different ways that we can achieve the objectives set out in our policy position. You will need to create an initial shortlist of options, ruling out any that are obviously ineffective or disproportionate to the issue. Depending on the nature of the issue, options may contain a package of different actions, for example to address multiple harms associated with the issue.

Once you have done this, you will need to give careful consideration to the **impact** of each plausible option, setting out:

- Direct and indirect (behavioural)¹ costs and benefits to the ICO;
- Direct and indirect costs and benefits to relevant controllers and data subjects;
- Direct and indirect costs and benefits to wider society;

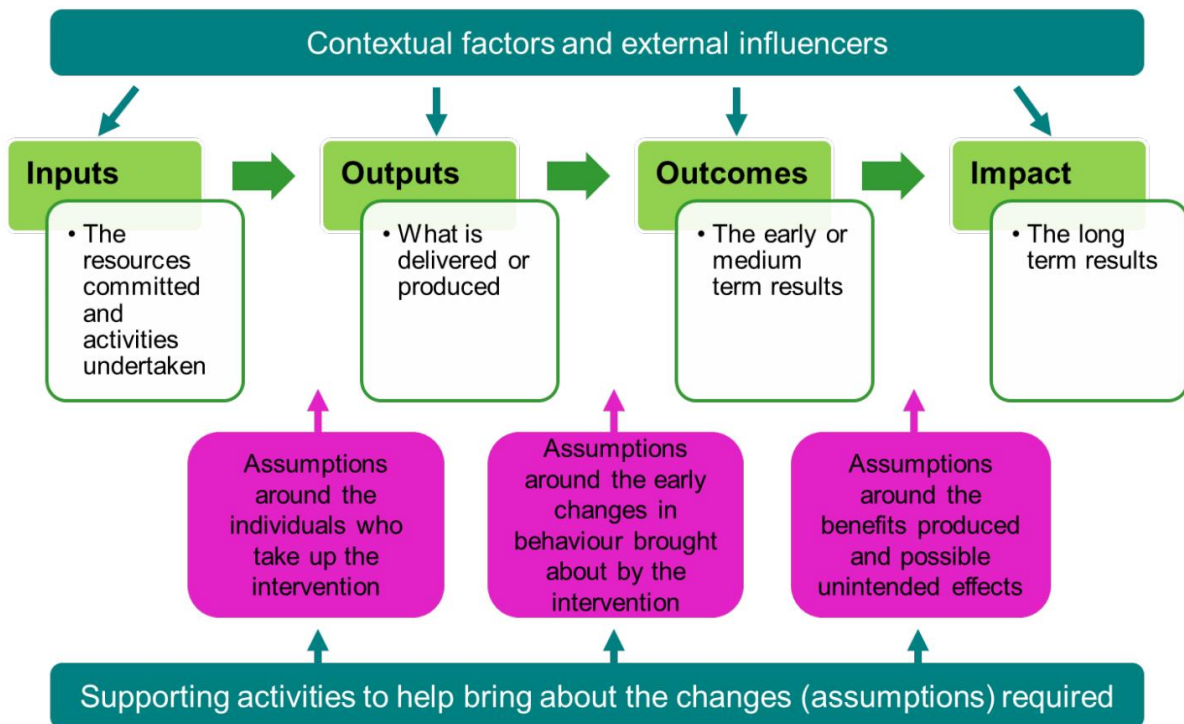
To arrive at a view of each option, you should consider:

- That the aim is to identify all impacts, on data subjects, data controllers, ICO, government (whether UK, regional or local), innovation etc;
- The extent to which the option achieves ICO's desired regulatory outcomes;
- That this includes thinking about impacts on economic factors (e.g. competition, investment drivers, economic growth) and where our actions might conflict with the objectives of other regulators;
- Distributional effects, particularly the impact on protected characteristics and vulnerable people;
- How you deal with uncertainty (eg sensitivity testing, ranges).

You should always evaluate maintaining the status quo as an option (this is sometimes called the "do nothing" option, though this is not an entirely accurate label). This will provide a baseline to evaluate your proposed interventions against. This helps to mitigate the risk that we will take actions that do more harm than good, or expend resources on actions that have only marginal benefits. Beyond this, you should also consider a do minimum/less (something between the preferred option and the status quo) and a do more (something that goes further than the preferred option) to help evidence that the preferred option has been pitched at the right level.

It is useful to think through the theory of change for each of your policy options. A summary diagram from the [Magenta Book](#) on evaluation can be seen below. For more information see section 2.2.1 of the [Magenta Book](#).

¹ Further discussion on direct and indirect impacts can be found in: Regulatory Policy Committee, RPC case histories – direct and indirect impacts (2019)



Whilst the options that you develop will be specific to the particular issue you are trying to address, the actions they encompass will tend to fall into the same broad categories, with similar considerations attached:

- Increase education and awareness of the issue amongst key stakeholders, for example through targeted communications and/or ICO guidance;
- Behavioural change by key stakeholders achieved through close engagement;
- Voluntary agreements such as codes of conduct developed by co-production with stakeholders;
- Change the way that ICO acts on the issue, for example through stricter or lighter touch enforcement of a particular regulation to achieve an outcome;
- Work with the appropriate government(s) where we have identified that placing one of our codes on a statutory footing, or a legislative change is the best way to achieve a particular outcome.

Determining the best course of action requires proportionate risk and benefit assessment. More complex interventions need more input from subject matter experts to accurately assess options and a greater depth of analysis of supporting evidence.

Questions you should ask yourself when developing options include:

- What can ICO do? And what could be done by regulated businesses, trade bodies or others without formal intervention from ICO?
- Could competition be used effectively to achieve our objectives?

- Could we achieve our objectives by doing less, or by recommending that regulations that do not deliver the intended outcomes could be repealed or amended?
- What expert advice do we need to develop our options?
- Can existing solutions be adopted or adapted to achieve our objectives?
- How complex is it to implement each option? What are the barriers? Do we need to work in partnership to deliver it successfully?
- What qualitative or quantitative measures can we use to evaluate the impact of an option? How will we know whether or not it is successful?
- Has due regard been given to the equality impact of each option across all relevant Protected Characteristics?
- What evidence is available or needed to value or estimate costs and benefits?

Options Analysis and Impact Assessment

Having developed a range of options to intervene on an issue, the next stage is to analyse and evaluate each option to enable ICO to make the best possible decision.

You will not always have time to carry out an in-depth, quantified impact assessment. ICO is developing lessons learned, including good practice, from operations carried out during the COVID-19 pandemic (Operations Kepler and Foresight). These entailed rapid development of policy positions on emerging issues.

[HM Treasury's Green Book](#) provides full guidance on impact assessment. The [Logic Mapping](#) approach developed by Department for Transport is a useful additional technique.

The assessment of options should be quantified, including economic and financial costs and benefits ("monetise" the options in HM Treasury terminology) wherever it is proportionate to do so. This is often challenging for data protection and information rights because many of the costs, benefits and associated harms are intangible. Three principles can guide you in this judgement:

- Policy context -what is the importance or sensitivity of the issues, is it novel or contentious?
- Analytical considerations- what data is available now, what is the resource cost of gathering more evidence and what is the degree of uncertainty around expected impacts?
- Practical considerations- how much time or resource is available to dedicate to the issue, what constraints or requirements does our regulatory or legal regime impose?

Because many of the harms ICO seeks to address are intangible, the costs and benefits of potential interventions by us, and other regulators, can be difficult to quantify. We propose four broad levels of Impact Assessment, the use of which should be guided by the three principles listed above. When considering the most appropriate level, you should balance a need to provide robust analysis

with the resource and time available. It is important to note that impact assessments include multiple costs and benefits, and the appropriate level should be chosen for each impact meaning that most impact assessments will include a combination of levels.

Level 1 - Describe impacts

Focuses on who is affected, broad magnitude and the types of benefit or costs that may arise. This may be suitable in cases where relatively few stakeholders are affected, decisions are non contentious or at low risk of challenge. It is also suitable at the very early stages of policy development or where availability of data is very limited.

Level 2 - Quantify impacts

This provides an indicative scale or value to help describe the size or magnitude of likely impacts on affected stakeholders. This is more appropriate in the early stages of policy development where data to monetise costs or benefits is not easily available.

Level 3 - Monetise impacts

This is appropriate for more significant or novel interventions, or perhaps where some stakeholders are disproportionately affected, and where data is readily available or easily collected. This level of analysis is appropriate for some of the impacts in the statutory codes of practice, as was the case recently for the Age-Appropriate Design Code.

Level 4 - Fully monetise impacts

Appropriate where there are significant or very different impact on stakeholders, or the decision is contentious, novel or at high risk of challenge. The effort to collect additional evidence and undertake analysis is justified by the significance of the decision.

Help with Economic Analysis

An introductory training programme is in preparation but in the meantime please contact the [Economic Analysis](#) team with any queries.

The Equality Duty, and People Impact Assessments

The Public Sector Equality Duty obliges ICO to pay due regard to the three aims of the general equality duty to:

- Eliminate unlawful discrimination , harassment and victimisation and other conduct prohibited by the Equality Act 2010 (EA 2010) and related Northern Ireland legislation;
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not share it;
- Foster good relations between people who share a relevant protected characteristic and those who do not share it.

The nine protected characteristics in the EA 2010 are: age, disability, gender reassignment or gender identity, marriage and civil partnership, pregnancy and maternity, race and ethnicity, religion and belief, sex and sexual orientation.

As a body which carries out functions in Northern Ireland, the ICO is subject to [s75 of the Northern Ireland Act 1998](#). This obliges public authorities, in carrying out their functions relating to Northern Ireland, to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

Personal data relating to some of the protected characteristics is considered to be [Special Category Data](#). Such data may be an important part of your evidence and it is essential that you ensure that it is properly protected. If your issue involves genetic or biometric data, keep in mind that it whilst it is not a protected characteristic as such, it is classed as Special Category, and may potentially be used to infer data relating to protected characteristics.

The [Equality and Human Rights Commission has produced guidance](#) on meeting the duty. To support options analysis, the key questions that you will want to focus on are:

- Does the policy affect service users, employees or the wider community? The relevance of a policy to equality depends not just on the number of those affected but on the significance of the impact on them.
- Is it likely to affect people with particular protected characteristics differently?
- Is it proportionate to test how different service users interact with and are affected by a policy intervention e.g. users with protected characteristics?
- Is it a major policy, significantly affecting how functions are delivered?
- Will the policy have a significant impact on how other organisations operate in terms of equality?
- Does the policy relate to functions that have been identified through engagement as being important to people with particular protected characteristics?
- Does the policy relate to an area with known inequalities?
- Does the policy relate to any equality objectives that have been set by ICO?

As well as evaluating your policy options against these questions, you will also want to evaluate the impact on equality of allowing the harms to continue unchecked.

ICO's Equality, Diversity and Inclusion (EDI) board has developed a new guide and screening forms to help you undertake a People Impact Assessment (PIA), also known as an Equality Impact Assessment (EQIA) – the terms are interchangeable. The PIA is a tool that helps us analyse policies and practices to make sure we do not discriminate or disadvantage our staff, customers, stakeholders, or members of the public. Carrying out a PIA involves systematically assessing the likely or actual effects our policies, activities and decisions have on people in respect to their protected characteristics.

What does Success Look Like?

Before moving to consultation, you should make sure that you have a clear understanding of what success looks like (which aligns closely with the policy objectives), and what success doesn't look like (or in other words, the foreseeable unintended consequences you would want to avoid). It is important to consider measurement and evaluation early on during the formulation of the policy position. This acts as a check and balance to make sure that we know why we are making the chosen intervention, as well as ensuring that we have a procedure in place to assess whether it meets its aims and objectives in the most effective way. You should not leave this until later in the process.

For each option you should set out a vision for what success would look like, and consider what evidence you will need to demonstrate success. Further information can be found under Step 7: Review.

Step 4: Consultation

Consultations involves engaging external stakeholders, which may be organisations or individuals, in our work to support transparency. In a policy context, consultation is critical to robust intervention, as it allows us to seek feedback on our understanding of a problem and whether our proposed approach or options are necessary or desirable.

Given robust policy development relies on stakeholder consultation, it is important to have a clear plan as to how stakeholders (both internally and externally) will be consulted during the policy development process. A stakeholder engagement plan can be developed which spells out who is likely to be impacted by a policy (e.g data subjects and controllers), who will have a large influence over policy development (e.g. government) and who might be champions of, or opposed to, particular interventions. These factors should be shape the consultation activities (e.g. calls for evidence, workshops, bilateral meetings etc) that take place with relevant stakeholders during policy development. As set out in central government guidance on evaluation (see section 1.10 of the [Magenta book](#)) relevant stakeholders can include:

- **Those responsible for the intervention under consideration:** these are the people who have most to gain from evidence that can reduce risk and uncertainty, and from learning what is working and what is not.
- **Those responsible for future policies:** this group will require evidence on what worked (and/or did not), why and how, and on transferable lessons.
- **Those responsible for appraisal analysis:** they will have the most insight into what evidence and data were missing from the appraisal of the intervention, and what will be useful for the appraisal of future policies.
- **Those responsible for scrutinising government decisions and spend:** those that hold government to account are an eager audience for evidence around the efficacy of the intervention's design and delivery, and its impact and cost.
- **Participants / recipients of the policy:** those affected by the policy are typically also key participants in the evaluation. Their input is required, but they will also have evidence needs and a perspective on what elements of the policy should be focused on.
- **Those delivering the intervention:** typically, although policies are often designed in central government, they are delivered by others, in many cases through a long delivery chain. Evaluation should be alive to the needs and issues of all those in the delivery chain.
- **The public (often via the media):** a key line of accountability is to the public who are keen to know that government money is being spent wisely, and that we are learning from past experience.
- **Academics / other researchers:** government is rarely the only interested party in a specific policy area. Academics and other researchers are often able to spend time scrutinising government data. It is important

to work with them to ensure the best use of the research evidence is being made and the maximum learning is being extracted.

Corporate Communications can offer advice and support on consultations. There are some circumstances in which we are required by legislation to consult, such as the development of a statutory code.

Formal consultation should be used once you have developed your analysis and evidence sufficiently to articulate the range of potential policy options. You may or may not have completed a full options analysis prior to consulting, and the right timing will depend on the issue you are addressing. You may, for example, want to put out a Call for Evidence or Call for Views as part of your research and evidence gathering to better understand how stakeholders view a particular issue.

You will need to give careful consideration to the type and scope of consultation that you undertake, taking into account the issue that you are addressing and the stakeholders who will be most affected by the issue, and by ICO's proposed intervention.

You should bear in mind that consultation is unlikely to be the best vehicle for seeking views from the public. Getting representative views from members of the public is best done through commissioned research, as set out in step 2.

We do not need to consult on every policy initiative – although it is necessary to do so if a policy intervention will or is likely to have a material impact on stakeholders. The table below indicates a range of situations where consultation is appropriate and good practice:

Situation	Example
A significant change to our interpretation of the law that will have practical consequences for data controllers, public authorities or citizens	<ul style="list-style-type: none"> • Updated guidance on an existing issue
A statutory obligation to do so	<ul style="list-style-type: none"> • Developing statutory ICO Codes of Practice
Likely to be a significant effect on a particular sector or activity	<ul style="list-style-type: none"> • telecommunications; • keeping personnel files
A need to find out about something we don't understand	<ul style="list-style-type: none"> • A call for evidence on a new policy issue • Early engagement with service users to better understand their wants and needs

Situation	Example
Controversy or uncertainty over an ICO approach to an issue	<ul style="list-style-type: none"> • A disagreement over the content of guidance with a political element
A need for engagement	<ul style="list-style-type: none"> • organisations' unwillingness to comply with the law; • misunderstanding of the law as explained in ICO guidance
A significant effect on complaints handling/other ICO business	<ul style="list-style-type: none"> • Publicising a change of position on a particular matter, or to advice that we provide to stakeholders

It is important to pay due regard to the comments and evidence we receive as a result of consultation and we should be open to making changes as a result of the responses to a consultation.

There are three broad types of consultation, described in more detail below:

- Formal, public consultation;
- Closed consultation;
- Informal consultation.

Formal Public Consultation

This is appropriate:

- where the ICO issues a significant piece of guidance and codes of practice; or
- in the case of statutory codes of practice. These are codes that relate to aspects of the Data Protection Act 2018. They are legally binding and require the approval of the Secretary of State. A recent example is the [Children's Code](#).

If you are recommending this type of consultation you will need to follow the ICO Consultations Policy available on ICON.

Closed Consultation

This is a more limited type of consultation. It could involve a small group of experts on a particular topic during the scoping or drafting process, or as part of the product sign off.

In practice you would contact organisations that have shown a particular interest in a subject, have previously demonstrated a willingness to engage with or who will obviously be affected significantly by – say – a change to our guidance. We can ask experts we know to nominate other participants and then host an event for between 10 – 20 participants.

Informal Consultation

This could take a number of different formats, for example:

- Using the Relationship Management Service's and Digital Economy Team's current stakeholder relationships;
- Using the Innovation Hub to support working with a cross-section of regulators, umbrella bodies/catapults and innovative businesses;
- Using ICO Regions to help manage consultation with stakeholders in Scotland, Wales and Northern Ireland;
- Engaging with other UK regulators;
- Using the International team's relationships with other data protection authorities, and groups such as the Global Privacy Assembly, to seek views on issues with a global interest;
- Workshops, teleconferences, email dialogue with existing contacts;
- internal discussions with other ICO colleagues – either as part of the initial scoping work or final sign off procedure.

Consultation Techniques

The [Open Policy Making Toolkit](#) offers a number of techniques to help ask the right questions and elicit the information that you need from your stakeholders.

Techniques listed as part of the section on [Understanding User Needs](#) are particularly useful for discovering and diagnosing policy problems and challenges.

Techniques listed as part of the section on [Generating Ideas](#) are particularly useful for translating user needs into potential policy positions or options.

Using Information Gathered During Consultation

The information that you gather during consultation should provide insights into:

- The scale and materiality of harm the identified issue is causing;
- How your stakeholders understand the issue you are addressing and the "real world" impact it is having;
- Whether your stakeholders think that your proposed interventions or policy positions will be desirable and/or effective;
- What your stakeholders think ICO should actually do;
- The scale of impacts and potential unintended consequences for your proposed intervention or policy position
- Other related issues or problems that are affecting them.

The outputs from your consultation should be weighed against the other evidence that you have gathered, and should form part of your analysis of each policy option.

You may discover other, related policy issues during consultation.

You will need to carefully consider any data protection implications arising from your consultation process.

Step 5: Recommendation and Decision

Making a Recommendation

Before finalising your policy options, you should set out your options with a clear recommendation of the preferred option, based on the evidence you have gathered and the consultation you have undertaken.

You should provide a clear explanation why this option is your preference, and consider the practical steps necessary for implementing it, in particular:

- Cost and resource implications for ICO and stakeholders;
- Impacts on the ICO, key affected groups and wider society;
- Whether new or updated guidance is needed;
- Supporting communications and media campaigns;
- Legal implications including interface with other regulators/regimes and any legal risks to ICO;
- How you will evaluate the option if it is implemented;
- Operational implications.

Policy Board Decision – Position Paper

For significant, strategic policy decisions the final decision-making step is normally to put a position paper to Policy Board. A position paper sets out our desired policy position in detail. It should include your options analysis, results of consultation and recommendation as outlined above. You should also provide an outline implementation plan. The paper should state whether it applies to the whole of the UK, any one part of it, or a combination (e.g. England and Wales).

Before submitting a position paper you should consider the following questions:

- Who in ICO is best placed to lead on delivery of your preferred option?
- What information and evidence is needed to present the case for intervention and what are the contentious or difficult issues?
- Are you aware of any limitations to the accuracy or reliability of your evidence and analysis?
- Is it useful to trial and test your proposals before committing to full implementation?
- What media or external affairs advice do you need, have you consulted colleagues early to develop a suitable communications strategy?
- As you developed your preferred options, have the right people (stakeholders and decision makers) been engaged and consulted?

The level of detail that you provide should be proportionate to the policy issue and sufficient for the board to make an informed decision. Board members will have limited time to read the paper so do ensure that you use Plain English and be clear up-front about the decision you want the board to make. Avoid going into a high level of technical detail unless it is critical to the decision.

Step 6: Implementation

Implementation can take a variety of forms, and will often be phased or gradual. Implementation, Evaluation and Consultation may be concurrent to some extent, and evidence gathered during evaluation could cause us to redesign our policy or service, or even to go back and reconsider our options.

[Prototyping](#) is a valuable approach if implementation is complex, as it allows us to rapidly iterate a solution and can help us to quickly identify and solve practical issues. If your implementation involves a transition period (for example a statutory code may have a transition period of up to a year), you may be able to use the time to gather additional evidence through the use of prototypes, and to identify and solve problems prior to full implementation.

Communications

A key consideration when implementing a policy decision is how to manage communications. The timing, purpose, content and style of communications will depend on the implementation approach considered and eventually adopted for your chosen option (as per step 3). Early engagement with Corporate Communications (for external comms) and the Knowledge Service (for internal comms) will help you identify your needs and plan accordingly.

Policy announcements are opportunities for ICO to present a positive case for regulation and the benefits that it can generate for users, funders and society at large. Most decisions also involve complexities that may mean that certain groups of stakeholders feel that they are losing out, or that their particular interests are being paid less attention than others. You will need to consider the impact of communications on different stakeholder groups, and whether any further engagement with particular stakeholders might help.

A variety of communications tools are available and you should use any or all of them as appropriate and proportionate to the policy issue. Some illustrative examples are listed below, and as noted above, you should always seek advice from Corporate Communications and the Knowledge Service:

External	Internal
Press release	ICON – front page message
E-newsletters	Knowabout sessions
Blog entries	
Relationship Management and/or Digital Economy team and/or Regional Offices and/or International via stakeholder meetings	Knowledge Pack
Speaking engagements	Managers briefing
Webinars	Briefing at team meetings/huddles

Twitter	Including revised content in training materials
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Guidance

Often, implementing a policy decision also means revising or updating some of our existing, externally-facing guidance, or creating new guidance.

If you are going to produce new or updated guidance, you should first contact the Policy Guidance team. The team can offer advice and support on writing guidance, and manage the process for producing it, culminating in submitting a draft for approval to the Guidance Governance Board. Following the correct process is important for ensuring clear ownership of guidance so that it can be maintained, updated and retired as needed.

The Policy Guidance team will shortly publish a “how-to” guide and this document will be updated to link to it when it is ready.

Step 7: Evaluation

Once you begin implementing a policy, you will need to measure and evaluate the real-world impact it is having to make sure it is really meeting our objectives. You should plan your evaluation early. Think about what data and evidence you will need to collect, and make sure it is proportionate. Make sure that you have the capacity and capability to analyse data and evidence.

Evaluation can be split into two strands:

- Process evaluation: whether an intervention is being implemented as intended; whether the design is working; what is working more or less well and why.
- Impact Evaluation: An objective test of what changes have occurred, the scale of those changes and an assessment of the extent to which they can be attributed to the intervention

Both strands are important in providing lessons that can be incorporated into future policy development processes and includes seeking feedback from stakeholders.

As an organisation that is alert, effective and always learning we need to be open to a) feedback regarding our policy interventions and the processes that underpin them, and b) working to improve the quality of our outputs.

You will want to consider the following questions when undertaking a review:

- What are the key success measures or performance indicators against which you plan to assess if our objectives have been met?
- Where will you find the data to assess the success indicators, is it available as routine monitoring information or will you need to collect data yourself?
- Does the data you need already exist? For example the ICO annual tracker measures a number of aspects of public opinion, and Ofcom measures online behaviour and attitudes.
- Have you planned ahead to secure resources to undertake your evaluation?
- Have you logged any lessons learnt from your evaluation, have you considered how you can share these with colleagues across ICO and, where appropriate, with our stakeholders?

The [HM Treasury Magenta Book](#) provides detailed government guidance on good evaluation practice.

Other Considerations

Making Regulatory Policy Quickly

This guide describes a detailed, iterative process for policy-making. However, you may occasionally find yourself needing to arrive at a policy position at very short notice. This is not ideal, but can happen due to a crisis or other unexpected event arising. Should this happen, it is critical to make sure that you are still able to engage as many of your key stakeholders as possible.

Policy Lab have produced the [“Policy Lab in a Day” guide](#), and this offers a range of tools and techniques you can use to generate creative ideas in the shortest possible time.

Fundamentally, regardless of the timeframe, you will always need to show that you have made recommendations based on the best available evidence. If time and evidence are limited, we should still be able to show the rationale for our eventual decision, and be able to understand its impact.

Annex A: Summary of Devolved and UK-wide Policy

Note The table below is a **general indication** of devolved policy areas. Devolution law is complex. For specific advice, please contact the relevant office.

Policy Area	Scottish Parliament	Welsh Assembly	NI Assembly
Agriculture	Yes	Yes	Yes
Arts & Culture	Yes	Yes	Yes
Borders & immigration	No	No	No
Business	Some	Some	Some
Charities	Yes	No	Yes
Civil justice	Yes	No	Yes
Consumer protection	Some	Some	Some
Criminal justice	Yes	No	Yes
Data Protection	No	No	No
Debt	Some	No	Some
Defence	No	No	No
Education	Yes	Yes	Yes
Elections	Some	Some	No
Employment law	No	No	Yes
Energy utilities	No	No	Yes
Environment	Yes	Yes	Yes
Equalities	Some	Some	Yes
Financial services	No	No	Some
Freedom of Information	Yes	No	No
Health	Yes	Yes	Yes
Housing	Yes	Yes	Yes
Income Tax	Yes	No	No
Local government	Yes	Yes	Yes
Regulated professions	Some	Some	Some
Social security	Some	No	Yes
Social Work	Yes	Yes	Yes
Sport	Yes	Yes	Yes
Tourism	Yes	Yes	Yes
Transport	Some	Some	Yes

Annex B: Taxonomy of Harms

it is important to note that the taxonomy:

- Uses the risk management distinction between causes, events and consequences to focusses on harmful consequences
- Is non-hierarchical and non-exhaustive, although we provide examples
- Contains some closely related potentially overlapping categories of harm, and that some harms can lead to others.

In addition, we note that the taxonomy focuses on harms as opposed to the benefits of avoiding harm.

A taxonomy of data protection consequences

Type	Category	Description	Examples
Individual	Financial harm	Negligently, knowingly, or purposefully paving the way for financial losses to occur	<ul style="list-style-type: none"> • Fraud • Impact on credit rating • Extortion • User Damages
	Bodily harm	Negligently, knowingly, or purposefully paving the way for physical injury to occur	<ul style="list-style-type: none"> • Suicide or other self-harm • Assault
	Costs of avoiding/mitigating harm	The cost incurred in the avoidance or mitigation of harms or vulnerabilities related to data privacy	<ul style="list-style-type: none"> • Time spent avoiding harm/risk of harm • Security costs
	Discrimination	Harms arising from discrimination or bias (either conscious or unconscious)	<ul style="list-style-type: none"> • Entrenched bias in automated decisions • Price discrimination
	Unwarranted intrusion	Unwanted communications or intrusions that disturb tranquillity, interrupt	<ul style="list-style-type: none"> • Targeted advertising • Nuisance calls or spam • Unwarranted surveillance

		activities, sap time or increase the risk of other harms occurring	
	Loss of confidentiality	Loss of confidentiality with the potential to lead to other harms or an increased risk of harm	<ul style="list-style-type: none"> • Reversed pseudonymisation • Breach leading to fraud or spam • Damage to personal or professional relationships
	Loss of control of personal data	Harms from thwarted expectations, through misuse, repurposing, unwanted retention or continued use and sharing of personal data, including a lack of commitment to the accuracy of data	<ul style="list-style-type: none"> • Unwarranted surveillance • Failure to maintain quality of data • Injury to peace of mind and ability to manage risk • Restrictions on ability to access or review use of personal data • Incompatible repurposing leading to distress
	Lack of autonomy; manipulation and influence	Restriction, coercion, or manipulation of people's choices or their ability to make an informed choice	<ul style="list-style-type: none"> • Unwarranted nudging • Power and information asymmetry
	Emotional distress (embarrassment, anxiety, fear)	Negligently, knowingly, or purposefully paving the way for emotional distress to occur	<ul style="list-style-type: none"> • Detriment to mental health • Loss of sense or control of identity • Distressed relationships • Loss of confidence
	Detriment from exposure of personal data	Detriment such as relationship breakdown, reputational damage or harassment/bullying brought on through exposure of personal data	<ul style="list-style-type: none"> • Relationship breakdown • Reputational loss/loss of standing • Harassment/bullying • Stigmatisation
	Chilling effects	Reduce use of services or activities due to an actual or perceived risk of potential harm	<ul style="list-style-type: none"> • Reduced activities requiring good credit rating

			<ul style="list-style-type: none"> • Fear of sharing data due to perceived risk
	Adverse effects on rights and freedoms	Negative impacts on rights and freedoms in and of themselves	<ul style="list-style-type: none"> • Restrictions to data privacy rights • Restrictions to freedom of assembly • Chilling effects on freedom of expression
Societal	Damage to law and justice	Restrictions on or subversion of legislative intent, or legal or judicial process	<ul style="list-style-type: none"> • Creating a route for widescale subversion of a law • Chilling effects on victims or witnesses
	Damage to media, information and public discourse	Negative impacts on media, information and public discourse at a societal level	<ul style="list-style-type: none"> • Mistrust in handling of electoral role influencing elections or voter turnout • Widespread mistrust leading to chilling effects on freedom of expression
	Damage to public health	Harms resulting in adverse health outcomes for society	<ul style="list-style-type: none"> • Mistrust in handling of health data leading to chilling effects on health service use
	Damage to the economy	Negative impacts on the economy that are significant at the local, regional, or national level, or for a specific sector	<ul style="list-style-type: none"> • Loss of trust from widespread privacy abuses leading to chilling effects on major services • Misuse of personal data leading to unfair competitive advantage
	Damage to the environment	Negative impacts on the environment either directly or indirectly resulting from misuse of data or mitigation of associated risk.	<ul style="list-style-type: none"> • High energy use associated with data mining, storage and sharing • Loss of ecological diversity and/or green space due to land use for server farms