

# The ICO's Consultation Policy

January 2024

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# 1. Introduction

This document explains how and why the ICO uses consultation in developing policy decisions and discharging our regulatory duties.

## 1.1. Context

The ICO exists to empower organisations through information, and uphold information rights in the public interest. We are responsible for the regulation of a [range of legislation](#) including the [Data Protection Act 2018](#) and the [UK GDPR](#).

Our actions and decisions have the potential to affect people and organisations across the country, and it is essential for us to have the best possible understanding of their implications before implementation. Consultation is an important part of this process and our wider Policy Methodology.

Consultation allows us to set out and test our thinking in a fair and transparent manner, increasing regulatory certainty for our stakeholders. This in turn allows our expectations to be better understood, our actions to be predicted and our advice to be relied on, in keeping with our [ICO25](#) strategic plan and good regulatory practice.

## 1.2. Scope

It is important that the ICO has a documented, consistent, and transparent approach to consultation that supports our evidence-based decisions. The purpose of ICO's Consultation Policy is to outline the core principles that we apply and the considerations we have when consulting.

We set out a framework to feed into policy- and decision-making, and detail the relevant stages and considerations before, during and after consultation based on widely recognised principles of good practice. However, given the range and nature of our work we will consider the issues on a case-by-case basis, and there may be occasions where we need to take a different approach.

## 1.3. Developing our approach

Our approach is underpinned by recognised good practice. We draw closely from existing principles and guidance set out by:

- HM Government in its [Consultation principles: guidance](#) and the [Regulators' Code](#);

- The common law 'Gunning Principles' on consultation;<sup>1</sup> and
- The [Public Sector Equality Duty](#) under the 2010 Equality Act, which is relevant to consideration of inclusion and accessibility.

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<sup>1</sup> These longstanding principles were endorsed by the Supreme Court in 2014, see *Moseley, R (on the application of) v London Borough of Haringey* [2014] UKSC 56 (29 October 2014).

## 2. Our approach

Consultation is an essential part of good policymaking and effective regulation. Doing it well requires the consideration of a range of issues and potential trade-offs in preparing for a consultation, in producing the consultation document, and after the consultation has closed.

### 2.1. Why do we consult?

Our actions and decisions have the potential to affect millions of organisations and individuals across the country, so it is critical that we are informed by a wide range of views and are able to share and test our thinking with our stakeholders.

Effective consultation leads to a variety of benefits, in particular it:

- Allows us to deepen our understanding of specific issues as we develop our thinking, allowing us to test whether our understanding and solutions will help address the problem we have identified.
- Gives people the opportunity to better understand and contribute to our thinking and evidence, enabling scrutiny and accountability in our work.
- Improves the transparency of what we do, by showing how stakeholders' views and experiences help shape our work.
- Helps us understand the likely impacts of a proposed course of action and identify unforeseen consequences, linked to our [Impact Assessment Framework](#).
- Is in some cases a statutory requirement. The Data Protection Act 2018 sets out some circumstances where we must consult, including on our codes of practice and other statutory guidance. More generally, consultation helps us meet our obligations under the Regulators' Code.

At the same time we recognise that consultation has its limits. Respondents to consultations can have a self-selection bias meaning that may not be representative of all relevant stakeholders, which we need to keep in mind when interpreting results. We use consultations as just one of a number of tools to ensure that we have the widest possible range of engagement and understanding of views on our work.

### 2.2. Preparing for consultation

To make sure our consultations are effective we consider the following in our planning.

### **2.2.1. The purpose and necessity of the consultation**

When we consult we will always be clear about the purpose of our consultation, why we are consulting and on what questions.

In some cases it is necessary for us to consult because we have a statutory requirement to do so, for example in relation to our codes of practice. More broadly however we will not consult simply for the sake of it, ask questions about issues where we have already taken a final view, or consult on minor changes or clarifications to existing guidance, policy or regulatory work.

In some circumstances it may be necessary for us to conduct a follow-on consultation, or to reconsult on an issue. However, we will seek to minimise these occurrences.

### **2.2.2. When we consult**

Consultation is often most useful at a formative stage of the policy or decision-making process, to stimulate discussion and to test our thinking and evidence. However, it is also important for us to have sufficient detail to allow intelligent consideration, informed responses and fruitful engagement.

To strike this balance we will undertake research and analysis prior to consultation, and may also invite views via seminars and meetings, or via surveys. We may set out options, and explain our reasoning for preferring one over the others.

In addition to consultations we may, where appropriate, issue calls for evidence or calls for views at earlier stages of the policymaking process. In these cases we will make clear our reasons for doing so and explain how responses will be taken into account as we develop our position.

## **2.3. The consultation itself**

In preparing consultation documents, and during the consultation itself, we will bear in mind the following points. We note that these are also relevant to broader forms of engagement and consultation, such as the use of focus groups, surveys, public meetings, public forums, workshops, advisory groups, dialogue sessions and conferences.

### **2.3.1. Simple, clear, accessible documents**

We are conscious of the burden that our consultations can place on our stakeholders, and as a result aim to keep our consultations as short and as engaging as possible while still providing the level of detail needed.

Our consultations often involve complex areas of policy and technical issues, and seek input from those with technical understanding. We aim to ensure that our documents are as simple as they can be given their intended audience.

In terms of accessibility, consultees can get in touch using the contact information on the consultation page if they have reasonable adjustments, in line with our [Reasonable Adjustment Policy](#). We typically also give consultees options as to how they can respond to us, such as via a downloadable PDF or Word document that they can email or post to us, and we adhere to the [ICO's Welsh language policy](#).

### **2.3.2. Length of the consultation period**

Our consultations last for different lengths of time depending on the circumstances, and will typically be between six and 12 weeks. The length of our consultations will always be clearly stated.

When deciding the duration and timing of the consultation, we consider:

- What is proportionate, taking into account the complexity of the issues, the length of the consultation paper and the number of questions, as well as seeking to avoid unnecessary delay to policy development.
- The likely availability and ability of stakeholders to respond, bearing in mind the need to allow reasonable time over holiday periods such as Christmas.
- Cabinet Office guidelines on consulting during election periods and pre-election periods, including:
  - the type of election (national or local);
  - whether a consultation is likely to impact on, or focuses on, an area where elections are being held;
  - whether consulting on an issue and publicising it would impact on the election; and
  - any government guidance published for specific election periods.

On rare occasions we may:

- Decide to change our timetable. Where this is the case we will explain why and seek to update all stakeholders.
- Be unable to consult for a minimum of six weeks, for example due to legally binding deadlines or emergency situations. If this is necessary, we will explain why and maximise opportunities to respond.

### **2.3.3. Ensuring awareness and engagement**

In order to maximise awareness and engagement with our consultations we publish them on the relevant part of our website.

We may also:

- Post about and link to our consultations via our social media channels, or via our newsletter.
- Make key stakeholders aware of consultations that are likely to be of interest to them. This will often include industry bodies, trade associations, civil society and other representative bodies.

## 2.4. After the consultation

After consultations close we bear in mind the following.

### 2.4.1. Publication of responses to our consultations

Our default position is to publish the responses to our consultations. It is important that our stakeholders have a transparent understanding of each other's views as well as ours.

We may choose not to publish some responses if we decide they are not suitable or relevant to the consultation. We still include these in the tally of overall number of responses we've received and explain why we haven't published them in the consultation summary document.

### 2.4.2. Treatment of confidential information

We understand that consultation responses will sometimes contain confidential information, or that respondents may wish to respond only if it can be done confidentially. In these cases we accept confidential responses, but will require respondents to mark their responses as confidential and explain the reasons for this. If necessary we will engage with respondents to discuss confidentiality. We will include confidential responses when reporting on the number of responses.

### 2.4.3. Treatment of personal information

If respondents are replying on behalf of an organisation, we publish the name of their organisation. If they are responding in a professional capacity, we may publish their job title (eg 'an anonymous response from a primary school teacher'). However, we do not publish anyone's name or contact details (including addresses, telephone numbers or email addresses). For further information on how we treat personal information please see our [privacy notice](#).

However, respondents should be aware that we are subject to the terms of the Freedom of Information Act 2000. This means we must comply with requests we receive for copies of recorded information that we hold. It is also in the public interest that we are open and transparent and accountable for the work that we do. Therefore, we may disclose any information we receive as part of a consultation to the requester and the wider world, unless an appropriate exemption applies (for example, if disclosure would, or would be likely to,

prejudice the respondent's commercial interests).<sup>2</sup> If we are asked to disclose information that is labelled as not suitable for publication, we will endeavour to contact the respondent so we can take their views into account about whether disclosure is appropriate.

#### **2.4.4. Our response and decisions**

Our next steps following a consultation, including the form and timing of our final decisions and summaries of responses, will depend on the circumstances and be set out in the consultation itself. If our timelines change we will update our stakeholders as needed.

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<sup>2</sup> Guidance on freedom of information, including how the range of exemptions are likely to apply, is available on the ICO website: [Guide to freedom of information | ICO](#).

Information Commissioner's Office

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