

The ICO's approach to impact assessment – our draft Impact Assessment Framework

Economic analysis – impact and evaluation

January 2023

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1. Introduction

1.1. Context

The ICO is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

One of the ICO's obligations is to protect the fundamental rights and freedoms associated with personal data. [Recital 4 of the General Data Protection Regulation \(GDPR\)](#) makes clear that the right to the protection of personal data is not absolute, and must be balanced against other rights and freedoms in a proportionate manner. As a result, the ICO must take into account the freedom to conduct a business when carrying out its work. This is particularly relevant given the central role of personal data and personal data flows in the global economy, and the increased scale of personal data collection and sharing driven by technological progress.

Impact assessments (IAs) are a key way in which regulators balance different obligations and objectives, and ensure that regulatory action is both proportionate to the issue at hand and not unduly burdensome on the businesses that they regulate.

The ICO has general legal obligations to consider the impact of its activities as part of a proportionate, risk-based approach to regulation. These include:

- a statutory duty to consider the desirability of promoting economic growth under Section 108 of the [Deregulation Act 2015](#), which has its own [Statutory Guidance](#); and
- an obligation under the [Regulators' Code](#) to consider how economic growth might be supported or enabled for compliant businesses and other regulated entities.

These existing obligations are expected to expand as part of the recent [Data Reform](#) proposals and the resulting [Data Protection and Digital Information Bill](#). In particular:

- The ICO will have new duties in relation to its functions under data protection legislation to have regard to the desirability of promoting innovation and competition, as well as the importance of the prevention, investigation, detection and prosecution of criminal offences and the need to safeguard public and national security, all of which enhance the requirement for IAs.
- Expectations and interest for IAs around our codes of practice have increased in recent years. We expect this to be formalised in a

requirement for the ICO to 'conduct and publish impact assessments when preparing a code of practice' under the Data Protection Act 2018 (DPA 2018).

These existing and anticipated duties have a common basis in general good regulatory practice. This includes ensuring that interventions are:

- made only when necessary;
- proportionate to the problem under consideration;
- informed by evidence and analysis of market conditions;
- conducted by staff with the necessary knowledge and skills; and
- appropriately evaluated so that lessons can be learned for the future.

1.2. Scope

This framework guidance sets out our approach to using IAs in our decision-making, as part of our commitment to regulatory good practice and providing regulatory certainty.

The purpose of this framework is to provide enhanced clarity about how we discharge our regulatory duties. This includes explaining the circumstances in which we are likely to conduct an IA, and where we are not likely to conduct an IA. It also summarises our approach to conducting IAs.

Our approach draws closely from the guidance set out by HM Treasury in the [Green Book](#). The Green Book is the UK Government's guidance on options appraisal and applies to all proposals that concern public spending, taxation, changes to regulations, and changes to the use of existing public assets and resources. It supports the design and appraisal of proposals that both achieve government policy objectives and deliver social value. Our guidance also reflects the [Better Regulation Framework](#), which sets out the principles of better regulation, providing a useful toolkit for measuring and improving the quality of regulation.

While many of the other relevant guidelines referenced throughout this document refer to 'regulatory impact assessment' in the context of regulators, we use the term 'impact assessment (IA)'. This reflects the broad scope of policy-making in the ICO, which often goes beyond the direct implementation of regulation, such as information dissemination and engagement interventions. 'Impact assessment' as used in this framework should not be confused with the term 'data protection impact assessment (DPIA)', which is a requirement for data controllers under the [UK GDPR](#) and [DPA 2018](#).

This framework guidance does not have binding legal effect. The ICO will apply this framework where it is appropriate to do so. In the event that we depart from the guidelines, we will normally set out our reasons for doing so.

1.3. What are impact assessments?

Impact assessments (IAs) are formal, evidence-based procedures that assess the economic, social, and wider effects of policy decisions. The purpose of IAs is to provide objective analysis to support decision-making. IAs use cost-benefit analysis to ensure good practice in developing policy based on robust evidence.

IAs are an essential part of considering different options for policy interventions, including the option to do nothing, and then, using objective criteria, selecting the best option.

They are part of the policy cycle (see Table 3 in Section 4) and use appraisal analysis, as set out in the Green Book, to ensure good practice in developing policy. They are based on robust evidence in order to provide objective analysis to support decision-making.

1.4. Why are impact assessments important?

IAs provide decision-makers with crucial information on whether and how to regulate to achieve public policy goals. They also help policy-makers defend decisions not to intervene in markets where the costs of doing so outweigh the benefits. They further help defend policy-makers' decisions by demonstrating that there are benefits to regulation – something that can be often overlooked (see [National Audit Office \(NAO\)](#), [World Economic Forum](#)).

IAs improve regulatory policy-making by:

- informing policy-makers about potential economic, social, and (where relevant) environmental ramifications;
- providing a mechanism to consider the impact of interventions on a range of stakeholders, including different groups of citizens and organisations. In some cases, for example, we will need to consider the impact of policy options on the interests of people living in different parts of the UK or people from different socio-economic contexts;
- improving the transparency of regulation by explicitly setting out the intervention theory of change and the quality of underlying evidence;
- increasing public participation in order to reflect a range of considerations, improving the legitimacy of policies;
- clarifying how public policy helps achieve its goals and priorities through policy indicators; and
- contributing to continuous learning in policy development by identifying causalities that inform ex-post review of policies and improve future policy-making.

2. When the ICO does an impact assessment

2.1. When will we do an impact assessment (IA)?

Table 1 sets out the circumstances in which we will do an IA. This includes IAs required under our statutory duties related to codes of practice and non-statutory IAs, such as those we undertake in line with best practice, where appropriate.

Table 1: When we will do an IA

<p>Statutory obligations for IA</p>	<p>The ICO has legal obligations to consider impact as part of a proportionate, risk-based approach to regulation. However, under the current legislation, there are no specific obligations on the ICO to carry out impact assessments. We anticipate this will change in the future as a result of the Data Protection and Digital Information Bill, which will create statutory obligations to carry out IA for codes of practice under the DPA18.</p> <p>These IAs should include an assessment of who would be likely to be affected by the code and the likely effect the code will have on them.</p> <p>Further details on our anticipated statutory duties are outlined in Annex A.</p>
<p>Non-statutory IAs</p>	<p>IA forms a key part of best practice policy-making and we expect them to be carried out in relation to many of our interventions and policy decisions as appropriate.</p> <p>A non-exhaustive list of the factors we will consider to decide whether an IA is appropriate is set out below. We would be more likely to carry out an IA if a policy decision was likely to:</p> <ul style="list-style-type: none"> • have a significant impact on the interests of data subjects; • have a significant impact on the interests of data controllers; • have a significant impact on the interests of wider UK society; • have a significant impact on (any or all of): <ul style="list-style-type: none"> ○ economic growth ○ innovation

	<ul style="list-style-type: none">○ competition;● have a significant impact on preventing, investigating and detecting criminal offences;● have a significant impact on safeguarding public and national security; or● involve a major change in ICO activities.
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Where we have identified a requirement for an IA, the nature of the IA will depend on the type of intervention or decision we are making, in line with the principle of proportionality. For example, an IA relating to a wide-ranging statutory code will look different to an IA concerned with a narrowly-focused, minor policy proposal.

Proportionality is a key concept in IA. Not all interventions will require the same level of scrutiny. In the case of a low-risk, well-evidenced and low-impact intervention, a light-touch IA is likely to be all that is necessary. On the other hand, a high risk, uncertain, and high impact intervention is likely to require a large-scale IA. The nature and scale of the IA will depend on several factors, including:

- policy context (eg is it novel or contentious);
- levels of uncertainty or risk;
- cost and resource implications of the intervention;
- analytical needs (eg do we have the evidence, what are the costs of obtaining evidence, and is the evidence reliable);
- practicalities (eg time and resources required to deliver the IA and the urgency of the need to act); and
- high learning potential (a low priority intervention based on the other criteria listed can have a high potential for filling a strategically-important evidence gap).

Overall, we will be guided by the principle that the resources and effort employed should be related to costs, benefits and risks involved to society and to the regulatory landscape as a result of the proposals under consideration.

There may be circumstances where we decide that even though an activity meets the criteria for an IA, it is impractical or unsuitable for us to do an IA. Where this is the case, we will state our reasons.

2.2. When won't we produce an impact assessment (IA)?

The circumstances in which we would not expect to produce IAs include but are not limited to:

- where the urgency of the matter makes it impractical or inappropriate;

- when conducting investigations or enforcement activities. This is because what is being enforced will have been put in place as a consequence of an IA for primary or secondary legislation;
- when publishing guidance relating to how we will undertake investigations and take enforcement action;
- when implementing primary or secondary legislation which has been approved by Parliament and already subject to IAs by the sponsoring government department, except where we have a large amount of discretion about how to implement the statutory requirement;
- when publishing proposals which draw together a range of options which have already been subject to separate IAs;
- where government has already undertaken an IA for a programme we have been asked to deliver;
- where an IA relating to the same issue has been produced relatively recently;
- avoiding duplication in situations or interventions related to regulatory cooperation and where an IA had been produced by another regulator;
- when the resources required to do an IA would be disproportionate to the expected impact of the proposal; and
- where decisions do not need an IA because they implement previously agreed policy.

3. Our approach to impact assessment

Our approach draws closely from best practice principles and guidance set out by HM Treasury in the [Green Book](#), the [Better Regulation Framework](#), the [Regulatory Policy Committee \(RPC\)](#), and the [Organisation for Economic Co-operation and Development \(OECD\)](#).

Our IAs will be guided by the following [principles for IA success](#). Where possible, IAs should:

- start at the inception phase of the regulation-making process;
- clearly identify the problem and desired goals of the proposal;
- identify and evaluate all potential alternative solutions (including non-regulatory ones) as applicable;
- always attempt to assess all potential costs and benefits, both direct and indirect considering outcomes and impact;
- be based on all available evidence and scientific expertise; and
- be developed transparently with stakeholders, and have the results clearly communicated.

The level of analysis should be proportionate to the problem it is addressing and reflect the scale or impact of the measure.

3.1. What will be included in ICO impact assessments (IAs)?

As a minimum, every IA will include the following elements in a proportionate manner:

- problem definition;
- rationale;
- description of the regulatory proposal;
- identification of alternatives (as applicable);
- analysis of benefits and costs; and
- setting out the proposed monitoring and evaluation framework.

Table 2 below sets out the steps involved in the ICO's IA process in more detail.

Table 2: ICO IA Steps

1: Problem definition	This step should explain the situation or problem the intervention aims to address, including the size of the problem, problem drivers, and expectations on how the problem will evolve. It should clearly set out the evidence
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	<p>base to support the identification of the situation or problem.</p>
<p>2: Rational for intervention</p>	<p>This step will consider the rationale for intervention and should explore the following questions:</p> <ul style="list-style-type: none"> • Is there a market failure? • Political and legal context: <ul style="list-style-type: none"> ○ How does the intervention fit with government objectives and the wider UK policy landscape? ○ What is the relationship of the intervention with other initiatives? • What are the current or future harms that are being tackled? This should be done in reference to the ICO's Taxonomy of Data Protection Harms. • What sectors, markets or stakeholders will be affected, and how, if the ICO does intervene? • Why is the ICO best placed to resolve the issue? Is there a legal basis for the ICO acting? • Could the issue be resolved without intervention (eg through the market, innovation or other stakeholder-led change)? This includes consideration of a 'counterfactual' scenario representing the consequences of no intervention.
<p>3: Detail of proposed intervention</p>	<p>This step will describe in detail the regulatory proposal under consideration and set out SMART (Specific, Measurable, Achievable, Realistic, Time-Limited) policy and implementation objectives to enable proper analysis and evaluation of the proposal.</p> <p>It should also include a Theory of Change building on steps 1 and 2 and clearly illustrate the following:</p> <ul style="list-style-type: none"> • the change (impact) the intervention aims to bring about; • the causal chain of events that are expected to bring about the change (activities, outputs and outcomes); • the main actors and groups expected to be impacted; and • how the objectives links to the problem(s)

	identified.
4: Identification of alternatives for options appraisal	<p>This step involves generating options for consideration. Initially a long list of options should be considered in respect to scope, solution, delivery, implementation and funding. These should be appraised against various critical success factors to produce a shortlist of options, including a preferred option, a do-nothing option and other credible options.</p>
5: Cost-benefit analysis	<p>Cost-benefit analysis carried out at this step includes proportionate monetised and non-monetised analysis of costs, benefits and risks considered together. The costs, benefits and risks of all the options (as applicable) should be identified quantitatively and qualitatively as far as is possible and proportionate.</p> <p>If necessary, any estimates should be adjusted proportionately for inflation, time discounting, risk and optimism biases via sensitivity analysis to produce figures such as the Equivalent Annual Net Direct Cost to Businesses (EANDCB), Net Present Social Value (NPSV) and Net Present Business Value (NPBV). Input into Business Impact Target (BIT) reporting should be considered as relevant.</p> <p>Costs, benefits and risks should, where possible, be split into direct and indirect impacts on relevant groups and individuals within society, including businesses; and include the following aspects as appropriate:</p> <ul style="list-style-type: none"> • all uncertainty, risks, sensitivities and assumptions and how each of these impacts the policy options and analysis; • any disproportionate adverse direct or indirect impacts on small and medium businesses (SMBs) that should be considered, ideally in quantified terms, with appropriate exemptions or mitigations where possible; • distributional analysis including proportionate quantification of the wider impacts of the intervention on groups and individuals within society (for example impacts on particularly vulnerable groups); • where relevant and significant, the assessment of the potential implications of the intervention for:

	<ul style="list-style-type: none">○ promoting innovation and competition;○ promoting economic growth;○ preventing, investigating and detecting criminal offences;○ safeguarding public and national security;○ trade and trade negotiations; and○ environmental matters; and● a full description of the preferred option implementation plan.
6: Monitoring and evaluation	<p>The final step should set out an indication of how implementation and impacts will be monitored and evaluated to assess effectiveness, together with any areas for improvement, or unintended consequences of the policy.</p>

4. Policy-making, consultation, and publication

4.1. How does impact assessment (IA) fit with the wider policy-making process?

The ICO's '[Policy Methodology Framework](#)' describes what is meant by regulatory policy in the ICO, the context in which the ICO operates, and the different tools and resources available to support policy-makers. It is non-prescriptive and is designed as a guide to good practice to be applied flexibly.

This 'Approach to Impact Assessment' framework is separate from the 'Policy-making Framework' but the two frameworks are closely related.

As highlighted previously, consideration of the need to conduct an IA should usually begin as soon as we start to consider an issue, with IA scoping being developed from then onwards. An IA should not be an additional step which takes place after a policy decision has already been made. The steps in our IA process and the stages of the policy-making process are interlinked and interdependent, as shown in Table 3 below.

Table 3: Alignment of policy methodology and impact assessment steps

Policy methodology steps	Impact assessment steps
1. Identifying the issue	1. Problem definition
2. Research and analysis	2. Rationale
3. Develop policy options	3. Description of the regulatory proposal
4. Consultation (formal and informal)	4. Identification of alternatives (as applicable)
5. Recommendation and decision	5. Analysis of benefits and costs
6. Implementation	6. Setting out the proposed monitoring and evaluation framework
7. Evaluation	

4.2. What is the consultation process for impact assessments (IAs)?

Consultation is an important part of the process of robustly assessing impacts. Ongoing dialogue between the ICO and stakeholders is an important part of policy-making. This dialogue will, at times, need to become more formal and at other times informal iterative consultation will be appropriate, using digital tools and open, collaborative approaches. Consultation is not just about formal documents and responses. It is an on-going process. It ensures that the development of proposals is open and the quality of our analysis is greatly assisted by the quality of the input received.

We will adopt a proportionate approach to consulting on our IAs, depending on the nature of the intervention under consideration. For example, consultation about a low-status, low-risk project could include targeted engagement with relevant affected industry groups, whereas consultation for a higher-status, higher-risk project is likely to be broader.

Where possible, we will normally include draft IAs when we consult publicly on codes of practice and other regulatory interventions as appropriate. These will generally form part of the consultation document, often as an appendix.

Consultation periods will last for a proportionate amount of time depending on the degree of urgency, complexity, impact and likely interest in the proposal, and the approach will vary depending on the type of IA in question.

4.3. Will impact assessments (IAs) be published?

The role of IAs is to provide objective evidence and analysis that feeds information into the design, scrutiny and approval processes that support decision-making. Accordingly, IA results should be presented transparently and should be published in a way that promotes public trust.

Our default position is a presumption of openness and transparency for all IA work with an ambition to always publish our final IA findings. However, there may be circumstances where we decide for good reason that it is not possible to publish our IA findings at all, or decide to publish a summary or redacted version of the IA findings. Where this is the case, we will state our reasons.

Annex A: Statutory obligations

At the time of drafting, we anticipate our statutory obligations around impact assessment will be as detailed here, based on the current draft of the Data Protection and Digital Information Bill. However, this is subject to change as the Bill follows the legislative process.

Clause 30 (**Codes of practice: panels and impact assessments**) of the [Data Protection and Digital Information Bill](#) inserts new Section 124C to the [Data Protection Act 2018](#).

"124C Impact assessments of codes of practice

(1) Where a code is prepared under section 121, 122, 123, 124 or 124A, the Commissioner must carry out and publish an assessment of—

- (a) who would be likely to be affected by the code, and*
- (b) the effect the code would be likely to have on them*

(2) This section applies in relation to amendments prepared under section 121, 122, 123, 124 or 124A as it applies in relation to codes prepared under those sections."

New Section 124C outlines the requirement for the Commissioner to conduct and publish impact assessments when preparing a code of practice under Sections 121 to 124A. Sections 121 to 124 in the [Data Protection Act 2018](#) relate to specified codes of practice:

- 121 relates to the data-sharing code
- 122 relates to the direct marketing code
- 123 relates to the age appropriate design code
- 124 relates to the data protection and journalism code.

124A is a new section to the [Data Protection Act 2018](#) inserted by Clause 29 (**Codes of practice as to the processing of personal data**) of the [Data Protection and Digital Information Bill](#).

"124A Other codes of practice

(1) The Commissioner must prepare appropriate codes of practice giving guidance as to good practice in the processing of personal data if required to do so by regulations made by the Secretary of State.

(2) Regulations under this section—

(a) must describe the personal data or processing to which the code of practice is to relate, and

(b) may describe the persons or classes of persons to whom it is to relate.

(3) Where a code under this section is in force, the Commissioner may prepare amendments of the code or a replacement code.

(4) Before preparing a code or amendments under this section, the Commissioner must consult the Secretary of State and such of the following as the Commissioner considers appropriate—

(a) trade associations;

(b) data subjects;

(c) persons who appear to the Commissioner to represent the interests of data subjects.

(5) A code under this section may include transitional provision or savings.

(6) Regulations under this section are subject to the negative resolution procedure.

(7) In this section—

"good practice in the processing of personal data" means such practice in the processing of personal data as appears to the Commissioner to be desirable having regard to the interests of data subjects and others, including compliance with the requirements of the data protection legislation; "trade association" includes a body representing controllers or processors."

124A states the Commissioner must prepare appropriate codes of practice giving guidance as to good practice in the processing of personal data if required to do so by regulations made by the Secretary of State. Where a code under this section is in force, the Commissioner may prepare amendments of the code or a replacement code.

New section 124C states the impact assessment should include an assessment of who would be likely to be affected by the code and the likely effect the code will have on them. 124C applies in relation to amendments prepared under section 121, 122, 123, 124 or 124A as it applies in relation to codes prepared under those sections.