

Consent or pay guidance impact assessment

January 2025

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1. Introduction

This impact assessment (IA) provides an overview of the anticipated benefits and costs associated with the Information Commissioner’s Office (ICO) guidance on consent or pay¹. The guidance sets out our current thinking on how consent or pay models in the UK can be compliant with data protection law and draws on a range of evidence including desk-based research and responses to our call for views².

The purpose of an IA is to improve regulatory interventions and policy-making by:

- informing decision-makers about potential economic, social, and other ramifications where relevant;
- providing a mechanism to consider the impact of interventions on a range of stakeholders, including different groups of citizens and organisations;
- improving the transparency of regulation by explicitly setting out the intervention theory of change and the quality of underlying evidence;
- 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 interventions and improve future policy-making.

Our approach follows the principles set out in the ICO’s Impact Assessment Framework,³ which in turn is aligned with HM Treasury’s Green Book⁴ and the Better Regulation Framework.⁵

The guidance on consent or pay seeks to provide regulatory certainty to organisations by explaining how the ICO will assess compliance with data protection law. The positions and expectations set out in the guidance are

¹ ICO (2025) *Consent or pay*. Available at: <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/online-tracking/consent-or-pay/> (accessed 23 January 2025).

² ICO (2025) *Responses to our call for views*. Available at: <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/online-tracking/> (accessed 23 January 2025).

³ ICO (2023) *The ICO’s Impact Assessment Framework*. Available at: <https://ico.org.uk/media/about-the-ico/documents/4027020/ico-impact-assessment-framework.pdf> (accessed 10 January 2025).

⁴ HM Treasury (2022) *The Green Book*. Available at: <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government/the-green-book-2020> (accessed 10 January 2025).

⁵ BEIS (2023) *Better Regulation Framework*. Available at: https://assets.publishing.service.gov.uk/media/65420ee8d36c91000d935b58/Better_Regulation_Framework_guidance.pdf (accessed 10 January 2025).

intended to inform the approach to data protection compliance of any organisation that operates a consent or pay model or is seeking to implement a consent or pay model. This in turn will help to ensure that UK online service users have access to online services which are compliant with data protection law. Provision of and access to online services that comply with data protection law will also help to protect the interests of wider UK society and the UK economy. As stated in our IA Framework, we are more likely to conduct an IA where there are likely to be significant impacts on these groups. In identifying the potential impacts of the guidance, it is important to distinguish between:

- Additional impacts that can be attributed to the guidance – these are affected by how the ICO chooses to develop the guidance.
- Impacts that are not attributable to the guidance. These are impacts that simply arise from the existing legal requirements that controllers are already expected to comply with.

For the purposes of the impact assessment, we are interested in impacts that are attributable to the guidance, rather than those that would have happened in the absence of regulatory intervention - a concept known as 'additionality'. These impacts are explored in Section 3.2. In terms of proportionality, as per the principles set out in our IA Framework, an impact assessment summary table approach was deemed proportionate here, as detailed in the remainder of this report.

1.1. Report structure

The structure of the remainder of this report is as follows:

- **Section 2: Context and baseline:** provides an overview of the contextual background to the consent or pay guidance and the current consent or pay landscape.
- **Section 3: Application of our impact assessment approach:**
 - From problem definition to rationale for intervention: sets out the market failures and data protection harms we have identified, the groups affected and the options we have considered.
 - Cost-benefit analysis: presents an overview of the assumptions used as well as an overview of the primary costs and benefits we have considered for our identified affected groups.
- **Section 4: Monitoring and review:** outlines future monitoring considerations.
- **Annex A:** provides more detail on how familiarisation costs are estimated to support the assessment of costs and benefits.

2. Context and baseline

This section provides an overview of the contextual background to the consent or pay guidance and the current consent or pay landscape which will provide a baseline for this impact assessment.

2.1. Context to consent or pay guidance

Consent or pay refers to a business model for funding online products and services. In this model, people are given a choice to:

- consent to an organisation using their personal information for personalised advertising in order to access a product or service ("**consent to personalised advertising**");
- pay a fee to access the product or service and avoid their personal information being used for personalised advertising ("**pay to avoid personalised advertising**"); or
- leave or decide not to use the product or service.

As a newly emerging issue, the ICO has no existing guidance on consent or pay, other than as stated in our call for views on consent or pay business models:⁶

'In principle, data protection law does not prohibit business models that involve consent or pay. However, any organisation considering such a model must be careful to ensure that consent to processing of personal information for personalised advertising has been freely given and is fully informed, as well as capable of being withdrawn without detriment.'

The guidance sets out a range of factors that organisations need to consider, when assessing whether their use of a consent or pay model allows people to freely give their consent to personalised advertising. These factors are:

- Power imbalance.
- Appropriate fee.
- Equivalence.
- Privacy by design.

The guidance builds on work we have previously conducted in related areas, including:

⁶ ICO (2024) *Call for views on "consent or pay" business models*. Available at: <https://ico.org.uk/about-the-ico/ico-and-stakeholder-consultations/call-for-views-on-consent-or-pay-business-models/> (accessed 10 January 2025).

- the 2021 Commissioner’s Opinion on online advertising proposals;⁷
- our joint paper with the Competition and Markets Authority (CMA) on harmful design;⁸
- guidance on the use of storage and access technologies⁹ (update on previous guidance on cookies and similar technologies);¹⁰ and
- the call for views on consent or pay business models.¹¹

2.2. Current consent or pay landscape – our baseline

In order to inform our understanding of the consent or pay landscape in the UK, we have conducted desk research looking at:

- use of consent or pay models among organisations operating in the UK; and
- interaction with these models by the UK population.

2.2.1. Use of consent or pay models by UK organisations

We have found that it is difficult to provide a definitive number of UK websites currently (or considering) implementing consent or pay models, although we are aware of the recent introduction of these models among a number of news media organisations in the UK. We also know that the social media organisation Meta has introduced a consent or pay model in the EU, after lengthy court proceedings at the European Court of Justice (ECJ)¹² and regulatory intervention by the Irish Data Protection Commission (DPC).¹³

⁷ ICO (2021) *Data protection and privacy expectations for online advertising proposals*. Available at: <https://ico.org.uk/about-the-ico/what-we-do/information-commissioners-opinions/> (accessed 10 January 2025).

⁸ ICO (2023) *It’s time to end damaging website design practices that may harm your users*. Available at: <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2023/08/it-s-time-to-end-damaging-website-design-practices-that-may-harm-your-users/> (accessed 10 January 2025).

⁹ ICO (2024) *Guidance on the use of storage and access technologies*. Available at: <https://ico.org.uk/for-organisations/direct-marketing-and-privacy-and-electronic-communications/guidance-on-the-use-of-storage-and-access-technologies/> (accessed 10 January 2025).

¹⁰ ICO (2018) *Cookies and similar technologies*. Available at: <https://ico.org.uk/for-organisations/direct-marketing-and-privacy-and-electronic-communications/guide-to-pecr/cookies-and-similar-technologies/> (accessed 10 January 2025).

¹¹ ICO (2024) *Call for views on “consent or pay” business models*. Available at: <https://ico.org.uk/about-the-ico/ico-and-stakeholder-consultations/call-for-views-on-consent-or-pay-business-models/> (accessed 10 January 2025).

¹² ECJ (2023) *Meta Platforms Inc and Others v Bundeskartellamt*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CJ0252> (accessed 10 January 2025).

¹³ IAPP (2023) *Irish DPC fines Meta 390M euros over legal basis for personalized ads*. Available at: <https://iapp.org/news/a/irish-dpc-fines-meta-390m-euros-over-legal-basis-for-personalized-ads/> (accessed 10 January 2025).

Much of the movement towards consent or pay models has been linked to regulatory efforts to ensure compliance with the use of cookies and other storage and access technologies. These technologies are sometimes used by organisations to collect information on users that can be used for personalised advertising.¹⁴ Our desk review of UK statistics and research on these organisations allows us to estimate that there may be approximately 90,000 organisations operating in the UK that collect information for this reason,^{15,16,17} equating to around 2% of the UK business population. This includes around 2,900 news media and social media organisations.^{18,19,20}

Consent or pay models have direct implications for the digital advertising sector. Our research illustrates the significance of the UK digital advertising market, with market reports estimating a direct contribution from this sector of £39 billion to the UK economy in 2022.^{21,22} We can assume that all industry sectors utilise advertising to a greater or lesser degree, which would account for the entire UK business population (approximately 5.6 million organisations).²³

¹⁴ Personalised advertising targets adverts on the basis of consumers' personal data, such as information on their personal characteristics and interests. The main types of personalised advertising are audience segmentation (the grouping of consumer profiles into 'audiences' characterised by intent, demographics, and interests) and retargeting (the serving of targeted ads to specific individuals whom advertisers identify as customers or potential customers).

¹⁵ DBT (2023) *Business Population Estimates*. Available at: <https://www.gov.uk/government/statistics/business-population-estimates-2023> (accessed 10 January 2025).

¹⁶ DSIT (2024) *UK Business Data Survey*. Available at: <https://www.gov.uk/government/statistics/uk-business-data-survey-2024/uk-business-data-survey-2024> (accessed 10 January 2025).

¹⁷ ICO (2024) *Data controller study*. Available at: <https://ico.org.uk/about-the-ico/research-reports-impact-and-evaluation/research-and-reports/data-controller-study/> (accessed 10 January 2025)

¹⁸ ICO (2024) *Register of fee payers*. Available at: <https://ico.org.uk/about-the-ico/what-we-do/register-of-fee-payers/download-the-register/> (Accessed 27 August 2024).

¹⁹ IBISWorld (2024) *Social Media Platforms in the UK Market Research Report (2014 – 2029)*. Available at: <https://www.ibisworld.com/united-kingdom/market-research-reports/social-media-platforms-industry/> (accessed 10 January 2025).

²⁰ IBISWorld (2024) *Video Downloading & Streaming Services in the UK - Market Research Report (2014-2029)*. Available at: <https://www.ibisworld.com/united-kingdom/market-research-reports/video-downloading-streaming-services-industry/> (accessed 10 January 2025).

²¹ IAB (2023) *The Digital Dividend*. Available at: https://www.iabuk.com/sites/default/files/public_files/IAB_DigiDivid_Report.pdf (accessed 10 January 2025).

²² £39 billion equates to around 1.4% of UK GDP in 2022 (i.e. the total value of goods and services produced during that year). ONS (2024) *Gross Domestic Product (GDP)*. Available at: <https://www.ons.gov.uk/economy/grossdomesticproductgdp> (accessed 10 January 2025).

²³ DBT (2023) *Business Population Estimates*. Available at: <https://www.gov.uk/government/statistics/business-population-estimates-2023> (accessed 10 January 2025).

Around 40,000 organisations in the UK are directly involved in the delivery of marketing services,²⁴ with just over 4,000 organisations and individuals on the ICO register of fee payers listed as 'specialising in direct marketing'.²⁵

Both the news media and social media sectors earn significant revenue from the sale of digital advertising space, with the potential user data they have available for targeted digital advertising being highly valuable to advertisers and publishers. A CMA market study estimated that in 2019 around £14 billion was spent on digital advertising in the UK, around 80% of which was spent on Google and Facebook (the latter rebranded as Meta in 2021).²⁶

2.2.2. UK population interaction with consent or pay models

Due to evidence gaps it is difficult to estimate how many people directly interact with websites that have introduced consent or pay models or are likely to in the future. However, research suggests that around 94% of the population in the UK aged over 16 (around 52 million people) have access to the internet (via any device, e.g. PC, mobile phone etc).²⁷ We also know that news media and social media websites are among the most visited in the UK, with audiences of almost 48 million individuals visiting Meta websites and average audiences of around 22 million for the top ten news websites in June 2024 alone.²⁸

Personalised advertising can improve the matching of adverts with consumer preferences and in some instances is desired by consumers, with industry research indicating that 34% of consumers surveyed wanted to be 'targeted based on their browsing history' and 25% stating they were 'receptive to ads

²⁴ There are around 16,635 advertising agencies in the UK according to official statistics, although there were 27,844 organisations and individuals on the ICO register of fee payers in categories related to advertising. Additionally, around 3% of organisations that provide services provided online provide online marketing or market research services (approximately 73,822 organisations). This provides us with a central estimate of approximately 39,447 organisations involved in the delivery of advertising services.

²⁵ ICO (2024) *Register of fee payers*. Available at: <https://ico.org.uk/about-the-ico/what-we-do/register-of-fee-payers/download-the-register/> (accessed 10 January 2024).

There were 4,344 organisations and individuals on the ICO register of fee payers listed as 'specialising in direct marketing'.

²⁶ CMA (2020) *Online platforms and digital advertising: Market study*. Available at: https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report.pdf (accessed 10 January 2025).

²⁷ Ofcom (2024) *Online Nation 2024 Report*. Available at <https://www.ofcom.org.uk/siteassets/resources/documents/research-and-data/online-research/online-nation/2024/online-nation-2024-report.pdf?v=386238> (accessed 10 January 2025).

²⁸ Ipsos (2024) *Ipsos iris Online Audience Measurement Service, June 2024*. Available at: <https://ukom.uk.net/top-twentys.php> (accessed 10 January 2025).

based on their previous purchases'.²⁹ However, the research also notes that consumers remain concerned about data privacy, with 48% preferring contextual advertising. Further academic research notes that personalised advertising 'poses risks to consumer welfare through offer discrimination and exploitation of their cognitive errors whilst online',³⁰ as well as risks posed by the use of algorithms and their potential to build in discriminatory bias.³¹

²⁹ IAS (2020) *Context matters*. Available at: <https://integralads.com/uk/insider/context-matters-new-uk-consumer-research/> (accessed 10 January 2025).

³⁰ Laux et al. (2021) *Neutralizing online behavioural advertising: Algorithmic targeting with market power as an unfair commercial practice*. Available at: <https://kluwerlawonline.com/journalarticle/Common+Market+Law+Review/58.3/COLA2021048> (accessed 10 January 2025).

³¹ Effecting change (2020) *Ban Online Behavioural Advertising*. Available at: <https://www.eff.org/deeplinks/2022/03/ban-online-behavioral-advertising> (accessed 10 January 2025).

3. Application of our impact assessment approach

As outlined in our Impact Assessment Framework³², impact assessments have six steps:

1. problem definition;
2. rationale for intervention;
3. identification of alternatives;
4. description of the regulatory proposal;
5. analysis of benefits and costs; and
6. setting out monitoring and review needs.

Steps one to four are covered in Section 3.1 below, with step five addressed in Section 3.2 and step six in Section 4.

3.1. From problem definition to proposed intervention

The table below provides more detail on the journey from problem definition to the proposed intervention (i.e. steps one to four in our Framework). It covers the market failures and data protection harms we have identified, the groups affected and the options we have considered.

Table 1: Impact assessment, steps 1-4

1: Problem definition	<p>Consent or pay models engage data protection law in important ways. In principle, data protection law does not prohibit business models that involve consent or pay. However, any organisation considering such a model must be careful to ensure that consent or pay models meet all of the requirements set out in data protection law. These include ensuring that consent to the processing of personal information for personalised advertising has been freely given and is fully informed, as well as capable of being withdrawn without detriment.</p> <p>Organisations from different sectors have implemented or are considering the adoption of consent or pay business models in the UK. These organisations seek clarity on how consent or pay models can be compliant with data protection law, as the ICO does not have existing guidance</p>
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³² ICO (2023) *The ICO's Impact Assessment Framework*. Available at: <https://ico.org.uk/media/about-the-ico/documents/4027020/ico-impact-assessment-framework.pdf> (accessed 10 January 2025).

for organisations explaining how the requirements of data protection law apply to these models.

2: Rationale for intervention

Rationale for Intervention

We have observed the emergence of consent or pay models elsewhere and, more recently, in the UK.³³ This has happened in the context of wider regulatory activity in the UK and abroad,³⁴ and has created a need for the ICO to provide regulatory certainty about whether and how these models can be compliant with data protection law.

We also understand that organisations want regulatory certainty to help them not just ensure compliance with the law, but to guide their future investment decisions. Therefore, it is important that the ICO intervenes as organisations actively move towards the deployment of consent or pay models in the UK.

ICO intervention will help to:

- Avoid contravention of data protection law by providing greater regulatory certainty.
- Enable informed engagement and discussion with organisations who seek the ICO's direction to provide the market with regulatory certainty.

We will effect meaningful behavioural change in key players, around their approach to the use of consent or pay models and online tracking that:

- better allows people to make informed choices consistent with the law;
- better allows people to gain understanding, oversight, and control of their personal data use;
- better protects people from suffering detriment through refusal or withdrawal of consent;
- better ensures a more equitable balance of power between organisations and consumers; and

³³ Press Gazette (2024) *Mail, Mirror, Express and Independent roll out 'consent or pay' walls*. Available at: <https://pressgazette.co.uk/news/daily-mail-independent-reach-mirror-express-consent-or-pay-cookies/> (accessed 10 January 2025).

³⁴ ECJ (2023) *Meta Platforms Inc and Others v Bundeskartellamt*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CJ0252> (accessed 10 January 2025).

³⁴ IAPP (2023) *Irish DPC fines Meta 390M euros over legal basis for personalized ads*. Available at: <https://iapp.org/news/a/irish-dpc-fines-meta-390m-euros-over-legal-basis-for-personalized-ads/> (accessed 10 January 2025).

- better allows organisations to ensure and demonstrate compliance with data protection law.

The consent or pay guidance is part of a suite of activities under the ICO's online tracking strategic cause. The ICO has operated online tracking and adtech related regulatory interventions since 2019 in order to provide regulatory certainty as to how those involved in the adtech industry can comply with data protection and e-privacy laws.

The ICO is the most appropriate body to respond to the demand for regulatory certainty in relation to data protection law compliance in consent or pay models. We will improve transparency and the accountability of organisations operating within the UK, including enhancing data subjects' understanding of what happens with their data when accessing online services.

Market Failures

ICO intervention mitigates against potential market failures resulting from a lack of clarity on how to implement consent or pay models while complying with data protection law.

These market failures can present as inefficiently high costs, as organisations could be incurring costs in order to ensure they are complying with the law, such as seeking legal advice or the costs associated with legal or regulatory action.

Another potential market failure involves the presence of negative externalities. Without clear ICO intervention on consent or pay there is a risk that organisations may not consider the full implications of non-compliant processing of personal data and the costs this may impose on individuals.

There may also be information failures, where organisations are unclear about the privacy information that they should provide to users of their services. This could erode users' privacy and information rights as individuals may not fully understand the intended use of their personal data.

Additionally, where individuals are less likely to trust organisations, it could lead to them opting out of sharing their data or using the service on offer. This diminishes the potential value of initiatives which depend on the processing of personal information for digital advertising purposes.

Policy and legal context

The issue of consent or pay has risen in prominence due in part to efforts in the UK and EU markets to tackle compliance

issues in respect of cookie use and the processing of personal data in the context of personalised online advertising.

These have included the cookies letters project,³⁵ whereby in November 2023 the ICO wrote to 53 of the UK's top 100 websites, 'warning that they faced enforcement action if they did not make changes to advertising cookies to comply with data protection law'. In response, 38 organisations made the required changes to their cookie banners within the 30-day deadline, while four more committed to reach compliance within a number of months. Written responses were also received from several organisations requesting further clarity on aspects of the requirements. Some noted that they would be assessing the potential impact of cookie compliance on the commercial sustainability of their business; and in doing so would consider alternative solutions including consent or pay models.

In 2021 the European Data Protection Board (EDPB) established a cookie banner taskforce in response to complaints by civil society organisations such as NOYB around cookie use by several major European websites.^{36,37} This led to the establishment of EDPB positions regarding harmful design practices, both generally and with specific reference to cookies;³⁸ along with guidance and cases within EU member states on cookie compliance.

Following lengthy court proceedings about its own data processing practices at the ECJ³⁹ and action taken by the Irish

³⁵ ICO (2024) *Commissioner warns UK's top websites to make cookie changes*. Available at: <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2023/11/commissioner-warns-uk-s-top-websites-to-make-cookie-changes/> (accessed 10 January 2025).

³⁶ EDPB (2021) *EDPB establishes cookie banner taskforce*. Available at: https://www.edpb.europa.eu/news/news/2021/edpb-establishes-cookie-banner-taskforce_en (accessed 10 January 2025).

³⁷ NOYB (2022) *226 complaints lodged against deceptive cookie banners*. Available at: <https://noyb.eu/en/226-complaints-lodged-against-deceptive-cookie-banners> (accessed 10 January 2025).

³⁸ EDPB (2023) *Report of the work undertaken by the Cookie Banner Taskforce*. Available at: https://edpb.europa.eu/our-work-tools/our-documents/other/report-work-undertaken-cookie-banner-taskforce_en (accessed 10 January 2025).

³⁹ ECJ (2023) *Meta Platforms Inc and Others v Bundeskartellamt*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CJ0252> (accessed 10 January 2025).

DPC,⁴⁰ Meta launched a consent or pay model on its Facebook and Instagram services within the EU market in November 2023.⁴¹ On 15 August 2024 the ICO released a statement on Meta's ad-free subscription service noting engagement with Meta to examine 'how UK data protection law would apply to any potential ad-free subscription service'.⁴²

Data Protection Harms

There is potential that data protection harms⁴³ may result from the use of consent or pay models that do not comply with data protection law. These harms could include loss of personal control and autonomy for individuals where the choice includes only 'consent' or 'pay' and where leaving (or not joining/using) the service is not an option. This restriction or manipulation of people's choices may affect their ability to make an informed choice without nudging.

There could also be medium or longer-term harms that occur as a result of non-compliant consent or pay models. These include financial and psychological harms, chilling effects, and discrimination on the basis of inferred data or entrenched bias. For example, there could be adverse effects on rights and freedoms where users are excluded from online services.

In relation to wider society, there is the potential for harms arising from reduced service offerings from organisations that primarily generate income through personalised advertising. If online service users opt to neither consent nor pay, but instead choose not to use the service; organisations may have to reconsider their service model. This could result in reduced service offerings or the removal of a service altogether. In the case of the news sector and social media sectors, this could result in reduced access to news sites or social platforms for

⁴⁰ IAPP (2023) *Irish DPC fines Meta 390M euros over legal basis for personalized ads*. Available at: <https://iapp.org/news/a/irish-dpc-fines-meta-390m-euros-over-legal-basis-for-personalized-ads/> (accessed 10 January 2025).

⁴¹ Meta (2023.) *Facebook and Instagram to Offer Subscription for No Ads in Europe*. Available at: <https://about.fb.com/news/2023/10/facebook-and-instagram-to-offer-subscription-for-no-ads-in-europe/> (accessed 10 January 2025).

⁴² ICO (2024) *ICO statement on Meta's ad free subscription service*. Available at: <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2024/08/ico-statement-on-metas-ad-free-subscription-service/> (accessed 10 January 2025).

⁴³ ICO (2024) *Overview of Data Protection Harms and the ICO's Taxonomy*. Available at: <https://ico.org.uk/media/about-the-ico/documents/4020144/overview-of-data-protection-harms-and-the-ico-taxonomy-v1-202204.pdf> (accessed 10 January 2025).

society; which has the potential to damage public access to media, democracy, information, and public discourse overall.

Affected groups

The main actors and groups expected to be impacted by the guidance on consent or pay include:

- **Current operators:** Organisations currently operating or in the process of implementing consent or pay models in the UK, particularly organisations within the news media and social media sector.
- **Potential operators:** Organisations within wider sectors experiencing a potential shift towards consent or pay models. For instance, organisations that facilitate personalised advertising methods and may consider implementing consent or pay models in the UK in the future.
- **Supply chain:** Organisations in the UK that are directly involved in the supply and delivery of advertising services that collect and sell personal data; as lack of confidence in the future of personalised advertising may impact their potential future service provision.
- **Wider UK businesses:** The wider population of UK businesses that use digital advertising, in particular businesses that advertise on websites using or considering consent or pay models, as they rely on digital advertising to target audiences.
- **UK population users:** The UK population with access to the internet and the potential to interact with consent or pay models, will face a choice between the financial impact of the 'pay option'; or the loss of privacy and potential for exploitation of vulnerabilities through personalised advertising with the 'consent' option.
- **Wider population:** Wider society who are not directly users are likely to be indirectly impacted.
- **ICO:** relevant UK regulator.

These affected groups are further illustrated in Figure 2, Section 3.2

Summary

The potential for market failures, the nature of policy alignment, the potential for data protection harms, and the scale of possible cohorts affected present a strong rationale for intervention by the ICO.

3: Options appraisal

A range of intervention options can be considered in relation to the problem under consideration. In order to identify a potential list of options we must look at realistic and achievable solutions. However, there are several challenges in the consideration of options to address the need for regulatory certainty around consent or pay models, including:

- Difficulty in obtaining a full understanding of the key significant dependencies, priorities, incentives, and other drivers around the use of consent or pay models, and a need for regulatory influence in advance of adoption of consent or pay models within a rapidly evolving landscape.
- Need for consistency (where appropriate) with other regulatory approaches in order to ensure a level playing field for UK organisations and wider society.

The options considered below are not the full list of potential solutions, but rather those that are possible and realistic at this point in time. They provide a sense of the implications of alternative approaches and demonstrate why the ICO decided on the preferred option.

The options considered include:

- Option 1: Business as usual⁴⁴ - the ICO has already set out an early overview of policy thinking on consent or pay within the 'Call for views on consent or pay business models'.
- Option 2: Preferred way forward – provide guidance outlining our position on factors that organisations need to consider when assessing whether their use of a consent or pay model allows people to freely give their consent to personalised advertising.
- Option 3: Do more – provide more extensive guidance aimed at specific stakeholder groups, which discusses in depth how data protection law applies when developing or using consent or pay models.

⁴⁴ Business As Usual (BAU) is defined in the HMT Green Book as the continuation of current arrangements, as if the proposal under consideration were not to be implemented. This is true even if such a course of action is completely unacceptable. The purpose is to provide a quantitative benchmark, as the "counterfactual" against which all options for change will be compared. BAU does not mean doing nothing, because continuing with current arrangements will have consequences and require action resulting in costs.

Option 2 was identified as the preferred option as it provides clarity on the implementation of consent or pay models for a wide variety of stakeholders, whilst still allowing the necessary flexibility for our policy positions to develop within a rapidly evolving landscape of technological change.

4: Detail of proposed intervention

Proposed intervention

The preferred option involves the provision of guidance on factors that organisations need to consider when assessing whether their use of a consent or pay model allows people to freely give their consent to personalised advertising. The guidance aims to ensure regulatory certainty for organisations.

The ICO guidance on consent or pay sets out a range of factors which include:

- Power balance.
- Appropriate fee.
- Equivalence.
- Privacy by design.

The changes that this guidance aims to bring about include:

- realised opportunities to improve and maintain compliance with data protection law;
- improved confidence among developers and users in applying data protection law to their consent or pay models;
- reduced compliance costs for organisations;
- increased efficiency, effectiveness, and competitiveness for organisations;
- enhanced positive impacts on individuals' rights and freedoms, including data privacy and freedom of expression; and
- reduced data protection harms.

The ICO plans to keep the guidance under review and update it as needed, to reflect any wider changes in understanding.

Timeline

The following Figure 1 shows some of the key milestones in the development of the guidance on consent or pay.

Figure 1: Timeline of key milestones linked to the ICO guidance on consent or pay.



Source: ICO.

Source: ICO.

3.2. Cost-benefit analysis

The costs and benefits of the guidance have been identified, as far as is possible and proportionate and summarised in Table 2, which provides an overview of what we consider to be the primary costs and benefits for each of the affected groups outlined in Table 1. We have summarised these affected groups below in Figure 2. This list should not be viewed as exhaustive or hierarchical.

Figure 2: Affected groups



Source: ICO.

3.2.1. Assumptions used in cost benefit analysis

The cost benefit analysis summarised in Table 2 is underpinned by the following assumptions.

- The counterfactual is a term used to describe the baseline or current level of activity; and is represented by 'Option 1: Business as usual' which is outlined in Table 1. Identifying this baseline allows us to illustrate the additionality of introducing the guidance.
- As noted earlier in Section 3.1, due to a lack of quantifiable evidence to the contrary and in line with existing government guidance,⁴⁵ for the purposes of the impact assessment we assume a counterfactual of compliance with existing law and guidance.
- We do not include impacts that are not attributable to the guidance. These are impacts that simply arise from the existing legal requirements that controllers are already expected to comply with.

As stated within the introduction to this impact assessment (see Section 1); for the purposes of impact assessment we are interested in impacts that are attributable to the guidance, rather than those that would have happened in the absence of regulatory intervention - a concept known as 'additionality'.

Additionality can take a number of forms and may include the realisation of impacts at an earlier stage or to a higher scale or standard than would have been the case without intervention.

While it is not always feasible to categorise impacts distinctly, we have identified those that are attributable to the guidance as far as possible and proportionate. Our impact assessment draws mainly on qualitative evidence to substantiate and measure impacts.

3.3. Overall assessment

There is limited quantitative data, and the analysis relies heavily on qualitative information which increases the uncertainty of the assessment. Bearing in mind these caveats, **our overall assessment of the intervention suggests that the benefits of providing guidance on consent or pay are likely to outweigh the costs**, as detailed in Table 2. This is largely due to the guidance itself being unlikely to impose significant costs over and above the existing legal requirements, whilst also being likely to deliver benefits in the form of a

⁴⁵ BEIS (2017) *Business impact target*. Available at: [Business Impact Target: appraisal of guidance - assessments for regulator-issued guidance](#) (accessed 10 January 2024).

reduction in data protection harms, such as loss of personal control and autonomy, and the enhanced ability for the UK public to make informed choices.

Table 2: Summary of potential impacts

Affected groups	Benefits	Costs	Scale of affected population
<p>Current operators: Organisations currently operating, or in the process of implementing consent or pay models in the UK.</p>	<ul style="list-style-type: none"> Improved knowledge and understanding of relevant data protection law. Improved regulatory certainty, enabling confidence in decision making and potentially unlocking investment. Reduced cost of compliance through clear regulatory messaging and supporting resources (such as guidance), as many organisations may not have easy or cost-efficient access to expertise or legal advice. 	<ul style="list-style-type: none"> Initial familiarisation costs with the ICO guidance (£94 per organisation).⁴⁶ Potential cost of changes or modifications to systems and/or business models, including direct implementation costs and indirect costs such as potential chilling effects, etc. Potential for reduced revenue from personalised advertising streams due to some users opting for 'pay' rather than 'consent'. 	<p>Approximately 2,500 news media organisations / individuals and around 400 social media and video downloading and streaming organisations are estimated to be operating within the UK.</p> <p>Assuming up to 65% of organisations engage with the guidance,⁴⁷ we estimate that this amounts to approximately 1,900 organisations within the news and social media sectors.</p>

⁴⁶ Familiarisation costs are the costs associated with reading and becoming familiar with new or revised guidance. We calculate these as administrative costs associated with an individual at manager, director or senior official level reading the document. See [Business Impact Target](#) guidance and Annex B for further detail on our approach.

⁴⁷ DBT (2022) *Business Perceptions Survey*. Available at: <https://assets.publishing.service.gov.uk/media/64b16e4907d4b80013347338/business-perceptions-survey-2022-research-report.pdf> (accessed 10 January 2025). The Business Perceptions Survey estimates that, across sectors, the share of businesses that engage with guidance is 65%.

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- Increased efficiency in allocation of resources, and avoidance of unnecessary costs associated with uncertainty or misinterpretation; as organisations are more aware of requirements.
 - Increased proactivity in addressing compliance issues, preventing costly mistakes or penalties due to guidance on best practice.
 - Reputational benefits resulting from increased trust and confidence amongst customers and wider society.
 - Potential for increased revenue due to some users opting for 'pay' option.

Potential operators:
Organisations that facilitate personalised

- Improved knowledge and understanding of relevant data protection law.

- Initial familiarisation costs with the ICO guidance (£94 per organisation).⁴⁸

Around 90,000 organisations that provide internet enabled services and/or products in

⁴⁸ Familiarisation costs are the costs associated with reading and becoming familiar with new or revised guidance. We calculate these as administrative costs associated with an individual at manager, director or senior official level reading the document. See [Business Impact Target](#) guidance and Annex B for further detail on our approach

<p>advertising methods and may consider implementing consent or pay models in the UK in the future.</p>	<ul style="list-style-type: none"> Improved regulatory certainty, enabling confidence in decision making and potentially unlocking investment. <p>[If potential operators progress to implementation, the benefits would then mirror those of current operators]</p>	<p>[If potential operators progress to implementation, the costs would then mirror those of current operators]</p>	<p>the UK use 'cookies and similar technologies to facilitate marketing and advertising' or 'generate money from users' data'.^{49,50,51}</p> <p>Assuming up to 65% of organisations engage with the guidance,⁵² we estimate that 58,500 organisations could be directly affected.</p>
<p>Supply chain: Organisations that provide digital advertising services.</p>	<ul style="list-style-type: none"> Improved understanding of relevant data protection law. Improved regulatory certainty, enabling confidence in decision making and investment. 	<ul style="list-style-type: none"> Potential for reduced revenue from diminished ability to sell or promote marketing services based on the use of personal data to customer organisations. 	<p>Approximately 40,000 organisations are directly involved in the delivery of advertising services, with around 4,000 organisations and individuals on the ICO</p>

⁴⁹ ICO (2024) *Data controller study*. Available at: <https://ico.org.uk/about-the-ico/research-reports-impact-and-evaluation/research-and-reports/data-controller-study/> (accessed 10 January 2025).

⁵⁰ DBT (2023) *Business Population Estimates*. Available at: <https://www.gov.uk/government/statistics/business-population-estimates-2023> (accessed 10 January 2025).

⁵¹ DSIT (2024) *UK Business Data Survey*. Available at: <https://www.gov.uk/government/statistics/uk-business-data-survey-2024/uk-business-data-survey-2024> (accessed 10 January 2025).

⁵² DBT (2022) *Business Perceptions Survey*. Available at: <https://assets.publishing.service.gov.uk/media/64b16e4907d4b80013347338/business-perceptions-survey-2022-research-report.pdf> (accessed 10 January 2025). The Business Perceptions Survey estimates that, across sectors, the share of businesses that engage with guidance is 65%.

	<ul style="list-style-type: none"> • Increased confidence among customer base, due to improved regulatory certainty; enabling increased willingness to use digital advertising services. • Potential for increased marketing spend by customer organisations, within advertising mediums that don't rely on personalised data. 	<ul style="list-style-type: none"> • Potential cost of modifications to digital advertising business models. • Potential for reduced effectiveness of insights and consumer targeting, due to a potential reduction in the amount of personalised consumer data available. 	<p>register of fee payers listed as 'specialising in direct marketing'.</p>
<p>Wider UK businesses: Remaining businesses that use digital advertising.</p>	<ul style="list-style-type: none"> • Improved understanding of relevant data protection law. • Improved public confidence in compliant collection and processing of data in line with data protection law. • Improved organisational reputation due to the potential for better compliance, which attracts customers, investors, and partners. 	<ul style="list-style-type: none"> • Potential costs related to exploration of alternative advertising models. • Potential for reduced effectiveness of insights and consumer targeting, due to a potential reduction in the amount of personalised consumer data available. 	<p>We can assume that all industry sectors utilise advertising to a greater or lesser degree, which would account for the entire UK business population (approximately 5.6 million organisations).⁵³</p>

⁵³ DBT (2023) *Business Population Estimates*. Available at: <https://www.gov.uk/government/statistics/business-population-estimates-2023> (accessed 10 January 2025).

UK population

users: Users of web services currently, or in the process of implementing consent or pay models

- Reduction in potential data protection harms; such as loss of personal control and autonomy, and the ability to make an informed choice.
- Access to better and more compliant online services.
- Improved public confidence in overall compliance with data protection law.
- Better protection for people from suffering detriment through refusal or withdrawal of consent.
- Enhanced positive impacts on individuals' rights and freedoms, including data privacy and freedom of expression.
- Potential financial costs associated with 'pay' option.
- Potential for reduced access to information (particularly on news sites and social media platforms) where the individual does not wish to (or is unable to) 'pay' or 'consent'.

Given the broad range of sectors in scope of the guidance on consent or pay, all those that have access to the internet are likely to be affected.

Assuming that around 92% of 'individuals in the UK aged 16+ have access to the internet at home',⁵⁴ this accounts for around 50 million people in the UK.⁵⁵

Given the popularity and reach of many news media and social media organisations it is assumed that up to around 89% of the population (around 45 million people) will interact with these websites in particular.

⁵⁴ Ofcom (2023) *Online Nation 2023 Report*. Available at <https://www.ofcom.org.uk/siteassets/resources/documents/research-and-data/online-research/online-nation/2023/online-nation-2023-report.pdf?v=368355> (accessed 10 January 2025).

⁵⁵ ONS (2024) *UK population Mid-year estimate 2022*. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates> (accessed 10 January 2025).

Wider population

- Reduction in potential data protection harms.
- Better ensures a more equitable balance of power between organisations and consumers.
- Higher data protection standards as the guidance mitigates against contravention of data protection law by providing greater regulatory certainty.
- Suffer from reduced access to online information if choose not to interact with consent or pay websites.

As with the 'people' affected group, the total UK population could be used as an upper end estimate of the number of people that could be affected by societal impacts.

Given the difficulty in estimating a total number of organisations directly affected by the guidance on consent or pay, it isn't possible to provide a robust estimate of those indirectly affected.

ICO

- Enable informed engagement and discussion with organisations who seek the ICO's direction to provide the market with regulatory certainty.
- Improved organisational reputation as a source of information and advice.
- Ability to allocate resources efficiently.
- Upfront resource costs.

Wholly represented by ICO.

- Consistency with international regulatory approaches and positions.
- Clarity to enable enforcement activity, as appropriate.
- Potential reduction in supervision costs from improved understanding of compliance.

Source: ICO.

4. Monitoring and review

Finally, as per our IA Framework, we consider monitoring and review. In line with organisational standards as set out within our Ex-post Impact Framework,⁵⁶ we will put in place an appropriate and proportionate review structure. This will follow best practice and align with our organisational reporting and measurement against ICO25 objectives. For example, this could include:

- feedback from organisations on the ICO guidance on consent or pay;
- monitoring of engagement figures; and
- working with other Data Protection Authorities to seek alignment and complementarity between our monitoring and evaluation activities.

⁵⁶ ICO (2024) *Ex-post Impact Framework*. Available at: https://ico.org.uk/media/about-the-ico/documents/4031030/ex-post-impact-framework_sept24_v1.pdf (accessed 10 January 2025).

Annex A: Familiarisation Costs

This annex sets out the approach taken to estimate familiarisation costs for the guidance, which follows an approach drawn from our impact assessment guidance.⁵⁷

A.1. Familiarisation costs per organisation

We have estimated the total time for reading the guidance at 3 hours and 1 minute. This is based on a word count of around 13,577 words and a Fleisch reading ease score of 44.7.

Table 3: Estimate of the average time taken to read the guidance

Document	Word Count	Fleisch reading ease score	Assumed words per minute	Estimated reading time (hr:mn)
Guidance	13,577	44.7	75	3h01mn

Source: ICO, BEIS (2019).⁵⁸

The impact of familiarisation on organisations can be monetised using data on wages from the ONS Annual Survey of Hours and Earnings.⁵⁹ Making the conservative assumption that the relevant occupational group is 'Managers, Directors, and Senior Officials', the 2024 median hourly earnings (excluding overtime) for this group is approximately £26. This hourly cost is uprated for non-wage costs using the latest figures from the Regulatory Policy Committee guidance,⁶⁰ resulting in an uplift of 22% and an hourly cost of approximately £31.

For the purposes of this assessment, we assume each organisation will read the guidance in its entirety once. This is not a recommendation on how organisations

⁵⁷ ICO (2020) *Age-appropriate design: a code of practice for online services – Impact assessment*. Available at: https://ico.org.uk/media/2617988/aadc-impact-assessment-v1_3.pdf (accessed 10 January 2025).

⁵⁸ BEIS (2017) *Business Impact Target: Appraisal of guidance: assessments for regulator-issued guidance*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609201/business-impact-target-guidance-appraisal.pdf (accessed 10 January 2025).

⁵⁹ ONS (2024) *Annual Survey of Hours and Earnings*. Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2024> (accessed 10 January 2025).

⁶⁰ RPC (2019) *RPC guidance note on 'implementation costs'*. Available at: <https://www.gov.uk/government/publications/rpc-short-guidance-note-implementation-costs-august-2019> (accessed 10 January 2025).

or individuals should familiarise themselves with guidance, as this will differ on a case-by-case basis. Therefore, we assume the cost of reading the guidance once to be approximately £94.