Information Commissioner's Office

The ICO's policy methodology

February 2024

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1. Introduction

This document provides clarity about how we arrive at policy decisions and discharge our regulatory duties. It explains why we have a policy methodology and outlines the seven stage process that our policy makers can follow for evidenced-based decision-making.

1.1. Context

We exist to empower organisations through information, and uphold information rights in the public interest. We are responsible for regulating a range of legislation, including the Data Protection Act 2018 and the UK GDPR.

We must be able to make evidence-based policy decisions within the legislative framework determined by UK government, including:

- the advice and guidance we provide to governments and organisations;
- how we respond to complaints raised by people or civil society groups; and
- how we understand and analyse new and emerging issues about any data protection, information rights or FOI implications.

Our policy methodology assists with this policy decision-making.

1.2. Scope

It is important that we have a documented, consistent, and transparent approach to policy making. We need to deliver evidence-based decisions that focus on achieving clearly stated regulatory outcomes.

The purpose of this document is to outline the core principles and steps that we apply when developing policy. Our policy methodology sets out a framework for our policy makers to follow and details the relevant stages. As part of our strategic plan, these stages reflect our approach to operate transparently and increase regulatory certainty for our audience. This in turn allows people to understand our expectations, predict our actions and rely on our advice.

1.3. Developing our approach

Our policy making covers a variety of activities and is not limited to guidance production. These can range from the reactive (deciding what our position is on a new technology or a novel use of personal information), to the proactive (anticipating future information rights challenges and setting out explicit rules and expectations).

Our approach is underpinned by national and international best practice. It draws closely from best practice principles and guidance set out by:

- HM Treasury in both the Green Book and the Magenta book;
- the Better Regulation Framework;
- the Regulatory Policy Committee (RPC); and
- resources from the Organisation for Economic Co-operation and Development (OECD) on regulatory policy making.

In order to focus on the needs of those most affected by policy, we align with:

- the Cabinet Office Open Policy Making toolkit; and
- the guidance produced by the Equality and Human Rights Commission on meeting the public sector equality duty.

In special circumstances where we have to make policy decisions in very short timescales, central government's "Policy Lab in a Day" guide can assist and inform our approach.

2.   Our policy methodology

We have designed our policy methodology to be a flexible and non-prescriptive framework that we use proportionately to assist us to make evidence-based decisions. The level of analysis and evidence we need to support a policy decision depends on the complexity or severity of the issue we are looking at.

2.1.   Our overall approach

Our approach to policy decision-making follows a **seven-stage process**. Navigating the steps of the methodology may not always be a linear journey, so we encourage our policy makers to respond flexibly to new evidence, changing priorities or a new understanding of a regulatory problem. The methodology prompts our policy makers to explain their reasoning and demonstrate how this is supported by relevant and reliable evidence.

Stage 1	**Stage 2**	**Stage 3**	**Stage 4**	**Stage 5**	**Stage 6**	**Stage 7**
Identifying the issue	Research and analysis	Developing policy options	Consultation	Making a decision	Implementa-tion	Evaluation

Our policy making is guided by the following principles for success:

- **Proportionality** – we tailor regulatory interventions in line with the size, systemic importance, complexity and risk profile of the problem or issue we are considering.
- **Collaboration** – we draw on expertise, experience and opinion through consultation with internal and external stakeholders in order to appropriately inform our policy decision-making.
- **Iteration** – where required, we apply the stages of the policy methodology multiple times in order to arrive at the most suitable regulatory intervention for the problem or issue we are considering.
- **Flexibility** – we recognise that the policy decision-making process may not always be linear and requires a flexible approach. We may need to revisit previous stages of the policy methodology or adapt to shifting regulatory priorities and timescales.

- **Evidence** – we arrive at an evidence-based decision by collecting the best evidence available to support regulatory policy decision-making. Evidence could be quantitative or qualitative from a range of internal and external sources.

2.2. Our stages in detail

Our policy makers may find themselves moving through the stages of the policy methodology in a different order, where appropriate, or working through them multiple times to develop and improve policy iteratively. We set out the seven stages in more detail below.

2.2.1. Identifying the issue (stage 1)

Issue identification requires scoping the problem we wish to solve or the opportunity we are trying to influence. This may involve collating:

- intelligence about an issue;
- it's complexity;
- associated risk; and
- how it is likely to change in the future.

We use various sources of information to identify issues that we think require action and prioritise them accordingly. For example, we can learn about potential issues from:

- complaints made to the ICO from the public, whistleblowers or civil society groups;
- media stories;
- investigations;
- our research and reports; and
- devolved political, social and legal matters.

Based on this information, our policy makers are required to consider the desired regulatory outcome and any likely inputs from legal and economic colleagues, such as impact assessment needs. The government's Open Policy Making Toolkit section on "Diagnosis" also contains a number of techniques that can assist us to gather information and understand policy challenges.

2.2.2. Research and analysis (stage 2)

This stage encourages our policy makers to identify knowledge or evidence gaps. Research and analysis can reveal what we know about an issue, and the wider context can highlight sensitivities and how effective our policy-making will be. We can also learn from previous policy-making and evaluation evidence.

Specifically, our policy makers need to understand in more depth:

- what the cause of the issue is;
- what harm may result from this issue; and
- who is most affected by it.

To assist this thinking, we have adopted a non-exhaustive Taxonomy of data protection harms that illustrates examples of a wide range of harms.

We may also commission research to help answer these questions, where appropriate. Qualitative research (opinion based) or quantitative research (numerical and statistical data) or a combination of both is available.

2.2.3. Developing policy options (stage 3)

Our policy makers consider the options that are available to them. These are the range of potential actions that the ICO can take to address the causes or drivers of the issue, or mitigate its harms in order to achieve our desired outcome. An option must be compliant with our legal and regulatory framework, and demonstrate that it achieves the desired outcome and objectives.

Policy makers can appraise these options as part of an impact assessment, where proportionate and required. This considers the costs, benefits, risks, advantages and disadvantages associated with each option, as well as their contribution to the overall objectives.

Available options could include maintaining the status quo, which also provides a baseline to evaluate other interventions against. As part of our framework for regulatory action, a full spectrum of regulatory interventions can also include routine stakeholder liaison, published guidance and toolkits, Commissioner's Opinions and codes of practice. It could even include more formal ICO powers, such as audits or information notices.

The public sector quality duty obliges us to take note of equality, diversity and inclusion in our policy decision-making. Also, the Equality and Human Rights Commission has produced guidance on meeting the public sector equality duty. This duty also assists our policy development and approach to safeguard and empower the public.

2.2.4. Consultation (stage 4)

Communicating with our audience, assists our transparent approach. In a policy context, it allows us to seek feedback on our understanding of a problem and whether our proposed approach or options are necessary, relevant or desirable.

Consultation can take various forms. A low-status, low-risk project (eg a minor update to sector specific guidance) could include targeted engagement with relevant affected civil society or sector groups. Whereas, consultation for a higher-status, resource intensive project (eg a statutory code) is likely to be broader. Consultation periods last for a proportionate amount of time, depending on the degree of urgency, complexity, impact and likely interest in the proposal. This is in line with our consultation policy.

2.2.5. Making a decision (stage 5)

Policy makers identify a preferred policy option with an informed view of the likely impacts. This is based on the previous stages of evidence-based exploration, research and consultation.

The decision-making process is in keeping with our strategic objectives and allows us to progress and finalise the policy response for implementation.

2.2.6. Implementation (stage 6)

By taking an iterative approach to implementation, we continue to develop a solution to help identify and solve practical issues. For example, we can create a piece of guidance or a toolkit and pilot it, before publishing.

In some cases, we may create policy products that have a transition period (eg a statutory code of practice). Therefore, we can identify and resolve any problems before fully implementing them.

When implementing a policy decision, we consider how we will communicate it externally, including timing, purpose, content and style. Where necessary and proportionate, we will begin any monitoring of an established policy decision in the implementation stage of the policy methodology.

2.2.7. Evaluation (stage 7)

It is important for us to monitor, review and evaluate the real world impact of our decision-making, as applicable. Proportionality is a key concept in evaluation and the nature of the intervention determines the type of evaluation activity required. Where appropriate, we may do this through our:

- ongoing monitoring activity;
- existing or bespoke research programmes; or
- formal targeted ex-post evaluation work.

Monitoring, reviewing, and evaluating are all important in providing "lessons learnt" that we can incorporate into future policy development processes. This can include seeking feedback from stakeholders.

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

3.   Supporting considerations

We do not view our approach in isolation. To ensure successful policy making, we use this methodology in conjunction with our other frameworks, policies and tools, including:

- Theory of change tool
- Taxonomy of harms
- Impact assessment framework
- Consultation policy
- Strategic plan
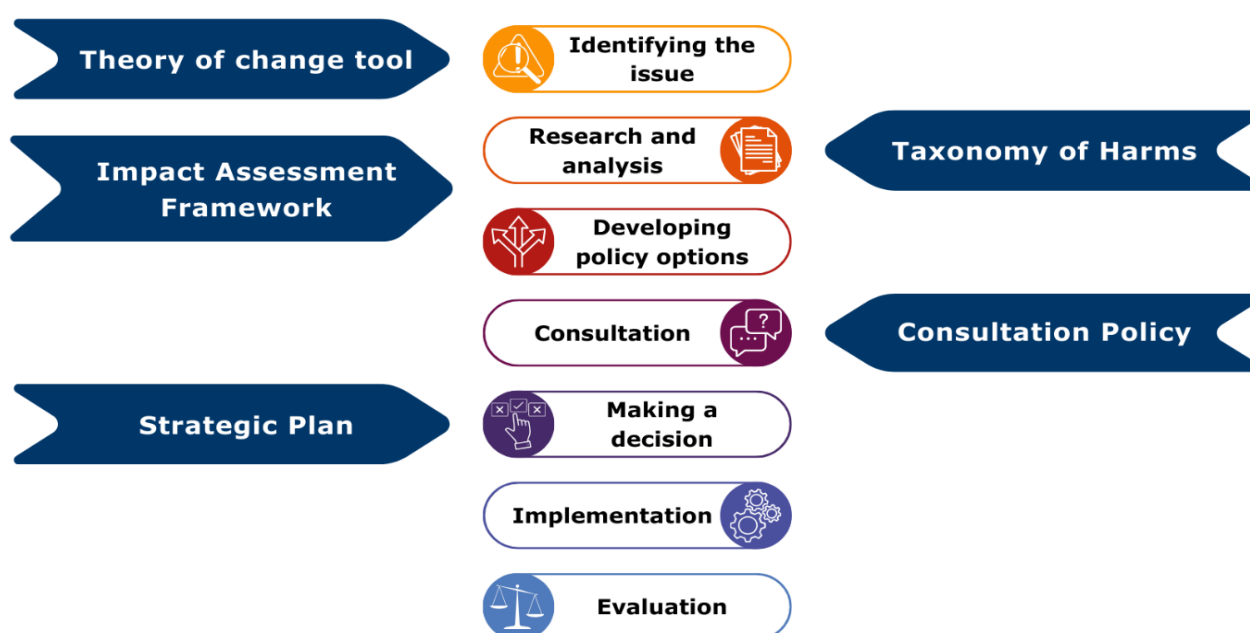
3.1.   Theory of change tool

Theory of change is a systematic approach used in intervention design and evaluation. It provides a visual or narrative representation of why and how an intervention intends to drive impact. It sets out the:

- inputs, activities, outputs, outcomes and impacts of an intervention;
- logic model that connects these variables; and
- assumptions that underpin the causal factors and provides a basis on which effectiveness can be assessed.

The diagram below displays a theory of change logic chain:
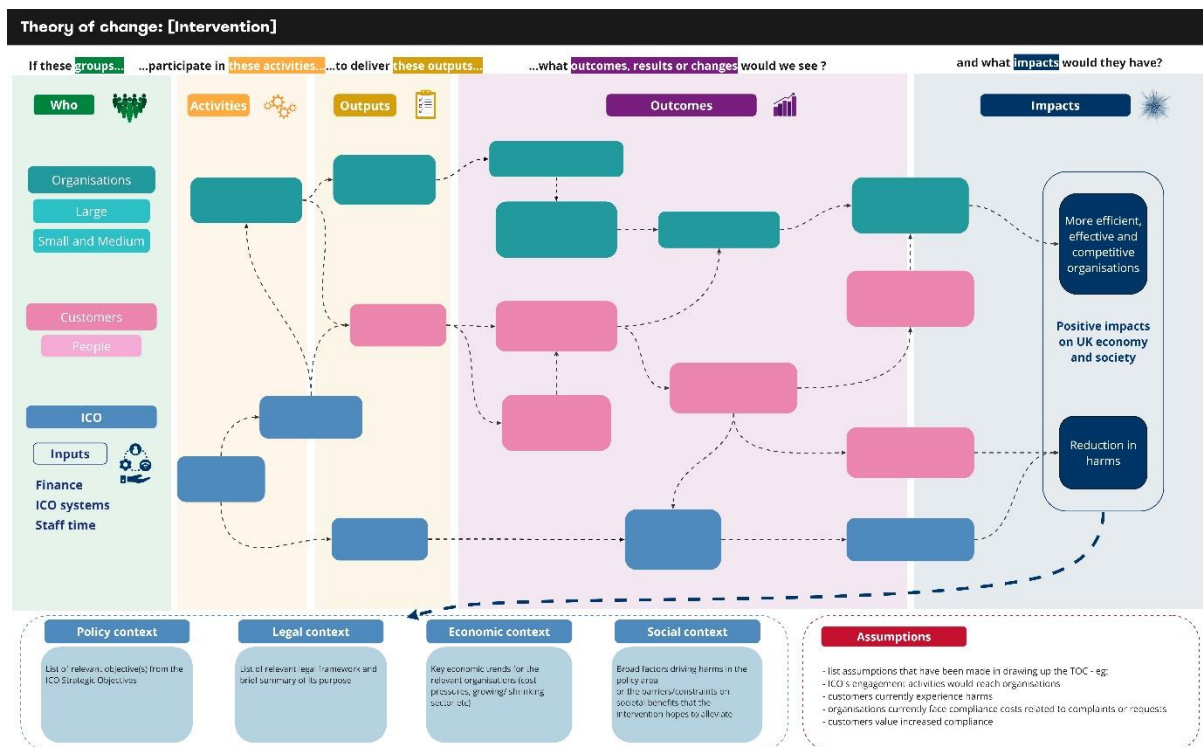
3.2. Taxonomy of harms

As required at stage 2 (research and analysis), our policy decision-making takes into account the potential harms to people.

Our approach to understanding the concept of harm draws legal, policy and economic insights from wide-ranging sources. Our policy makers need to understand in more depth:

- what the cause of the issue is;
- what harm may result from this issue; and
- who is most affected by it.

To assist this thinking, we have adopted a non-exhaustive Taxonomy of data protection harms that illustrates examples of a wide range of harms.

3.3. Impact assessment framework

The impact assessment framework (IAF) is separate from the policy methodology, but they are closely related. The purpose of the IAF is to clarify how we discharge our regulatory duties. This includes explaining in which circumstances we are likely to conduct an impact assessment (IA), or not. It also summarises our approach to conducting IAs.

We usually begin to determine whether we need to conduct an IA as soon as we start to consider an issue. We develop IA scoping from then on and not as an additional step after we've made a policy decision. The steps in our IA process

and the stages of the policy-making process are interlinked and interdependent, as shown in Table 1 below.

Table 1: 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. Developing policy options	3. Identification of alternatives (as applicable)
4. Consultation (formal and informal)	4. Description of the regulatory proposal
5. Making a decision	5. Analysis of benefits and costs
6. Implementation	6. Setting out a proposed monitoring and evaluation plan
7. Evaluation	

A note on monitoring and evaluation

IAs and evaluation are interrelated processes, with differing ex-ante and ex-post focuses, but with each helping to improve the other. Both activities enhance our understanding of what works and grow our organisational evidence base. Our evaluation framework is being developed and will compliment stage 7 (evaluation) in this policy methodology.

3.4. Consultation policy

Our consultation policy provides a framework for conducting effective external consultation. Consultation is required at Stage 4 of our policy methodology and it allows us to:

- deepen our understanding of specific issues;

- test whether our understanding and solutions will help to address a problem; and

- identify unforeseen consequences of proposed work.

Communicating with our audience assists our transparent approach. Consultations can also help us to meet our obligations under the Regulators' Code.

3.5. Strategic plan

Our policy decision-making is underpinned by our strategic objectives. Our current strategic plan is [ICO25](#), which sets out:

- why our work is important;
- what we want to be known for and by whom; and
- how we intend to achieve this by 2025.

In doing so, it describes our purpose, objectives and values and the shift in approach we aim to achieve through the life of the plan.

The environment in which we work is complex, fast-moving and ever-changing. ICO25 helps us to understand and describe our priorities, enabling us to make informed choices about the action we take and the policy interventions we make. It has been informed by extensive stakeholder consultation and the responsibilities we have been given by Parliament.

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