

The ICO's Impact Assessment Framework

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1. Introduction

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 impact assessment (IA), and where we are not likely to conduct an IA. It also summarises our approach to conducting IAs.

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 \(UK GDPR\)](#) 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. For example, these other rights and freedoms include, freedom of expression and information, freedom to conduct a business, the right to an effective remedy and to a fair trial. As a result, the ICO must take into account a range of factors when carrying out its work.

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 those 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 carry out activities in a way that supports those we regulate to comply and grow.

These existing obligations are expected to expand as part of the [Data Protection and Digital Information Bill](#).¹ The ICO will have new duties in relation to its functions to have regard to the desirability of promoting innovation and

¹ We expect the Data Protection and Digital Information Bill to become law in 2024 and references to the Bill should be read as references to the Data Protection and Digital Information Act if and when it becomes law. We may also subsequently update this guidance without consultation to reflect the legislative process linked to the Bill.

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.

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

- made only when necessary once the problem, the risks and the context have been considered;
- 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 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 on the guidance set out by HM Treasury in the [Green Book](#).² And it 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 Framework 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](#).

² 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.

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 interventions based on robust and holistic evidence.

IAs are an essential part of considering different options for intervention, 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 decision-makers defend decisions not to intervene in markets where the costs of doing so outweigh the benefits. They further help defend decisions by demonstrating that there are benefits to regulation – something that can be often overlooked.³

IAs improve regulatory interventions and policy-making by:

- informing decision-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 intervention 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;

³ See [National Audit Office \(NAO\)](#), [World Economic Forum](#).

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- 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.

2. When the ICO does an impact assessment

Our decision to complete an IA and its form will be decided on a case-by-case basis. This will depend on our relevant statutory obligations, the characteristics of the intervention we are considering, and what we consider to be proportionate in the circumstances.

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 any statutory duties and non-statutory IAs, such as those we undertake in line with best practice, where appropriate.

Table 1: When we will do an IA

Statutory obligations for IA	<p>The ICO has legal obligations to consider impact as part of a proportionate, risk-based approach to regulation. However, under current enacted legislation, there are no specific obligations on the ICO to carry out impact assessments. We anticipate this will change as a result of the Data Protection and Digital Information Bill,⁴ which will create statutory obligations to carry out IA for codes of practice under DPA 2018.</p>
Non-statutory IAs	<p>IA forms a key part of best practice holistic scrutiny of regulatory proposals and we expect them to be carried out in relation to many of our intervention decisions as appropriate. A non-exhaustive list of the factors we will consider to decide whether an IA is appropriate is set out below.</p> <p>We would be more likely to carry out an IA if an intervention 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

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UK society;

- have a significant impact on (any or all of):
 - economic growth
 - innovation
 - 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.

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 (eg a sector specific training offer) a light-touch IA is likely to be all that is necessary. On the other hand, a high risk, uncertain, and high impact intervention (eg a statutory code in a novel policy area) is likely to require a larger-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
- 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.⁵ 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 for statutory codes and 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.

⁵ Further information on how we ensure our approach is proportionate when carrying out investigations and enforcement activity in relation to the conduct of individual controllers or processors will be detailed in our forthcoming Penalties Guidance and Procedural Guidance for UK GDPR/DPA 2018 cases.

3. Our approach to impact assessment

As a minimum, every IA will include six steps in a proportionate manner: problem definition; rationale; identification of alternatives (as applicable); description of the regulatory proposal; analysis of benefits and costs; and setting out the proposed monitoring and evaluation needs.

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 technical 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?

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

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

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

Table 2: ICO IA Steps

<p>1: Problem definition</p>	<p>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 base to support the identification of the situation or problem.</p>
<p>2: Rationale 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 specific groups of persons, organisations, markets or any other 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: Identification of alternatives for options appraisal</p>	<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>
<p>4: Detail of proposed intervention</p>	<p>This step will describe in detail the preferred regulatory proposal under consideration and set out SMART (Specific, Measurable, Achievable, Realistic, Time-Limited) policy</p>

and implementation objectives to enable analysis and evaluation of the proposal.

It should also include a Theory of Change building on steps 1 to 3 and clearly illustrate the following:

- 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.

5: Cost-benefit analysis

Cost-benefit analysis carried out at this step includes analysis of the costs, benefits and risks and should be considered from both a societal and economic perspective, in line with our objectives. The analysis may be quantitative (applying figures to the different costs and benefits), take a qualitative view of the different impacts, or use a mix of both, as far as is possible and proportionate.

Where monetised estimates are produced, if necessary, these should be adjusted proportionately for inflation, time discounting, risk and optimism biases via sensitivity analysis. Depending on reporting requirements and evidence availability, this step should consider the need 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).

Costs, benefits and risks should, where possible, be split into direct and indirect impacts on relevant groups and individuals within society, and include the following aspects as appropriate:

- 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

	<p>where possible;</p> <ul style="list-style-type: none">• 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.
6: Monitoring and evaluation	<p>The final step should set out an indication of how implementation and impacts will be monitored and reviewed to assess effectiveness, together with any areas for improvement, or unintended consequences of the intervention.</p>

4. Policy-making, consultation, and publication

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, and should be conducted concurrently.

Consultation is an important part of the process of robustly assessing impacts and should be delivered in a proportionate manner 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.

Our default position is a presumption of openness and transparency for all IA work, with an ambition to always publish our final IA findings.

4.1. How does impact assessment 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 'Impact Assessment Framework' is separate from the 'Policy Methodology 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. Identification of alternatives (as

4. Consultation (formal and informal)	applicable)
5. Recommendation and decision	4. Description of the regulatory proposal 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.

Monitoring and evaluation activity should begin in conjunction with implementation of an intervention. Proportionality is also a key concept in evaluation, as it is in IA, and the nature of the intervention will determine the type of evaluation activity required. Where considered appropriate, this may be through our ongoing monitoring activity, existing or bespoke research programmes, or through formal targeted ex-post evaluation work.

4.2. What is the consultation process for impact assessments?

Consultation is an important part of the process of robustly assessing impacts. 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 (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.

Where possible, we will normally include draft IAs when we consult publicly on codes of practice and other regulatory interventions, such as guidance, as appropriate. These will generally form part of the consultation document, often as an appendix. And in circumstances where we use consultative panel approaches, if appropriate we will include impact considerations.

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. Decisions to

consult and for what period of time will be made in line with the [ICO's Consultation Policy](#).

4.3. Will impact assessments 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.

Information Commissioner's Office

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