

A guide to this consultation:

Regulatory action policy;
statutory guidance on our regulatory
action; and
statutory guidance on our PECR powers

Start date: December 2021

End date: March 2022



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Introduction

The mission of the Information Commissioner's Office (ICO) is to uphold information rights for the UK public in the digital age. Our vision is to increase the confidence the UK public have in organisations that process personal data and in those responsible for making public information available.

To help us achieve our mission we set strategic goals, one of which is to enforce the laws we help shape and oversee.

The statutory guidance documents and our regulatory action policy (RAP) set out how we aim to carry out our mission and achieve our goals.

We consulted on the statutory guidance in October 2020, but are re-running the consultation alongside the RAP. We are actively targeting a range of stakeholders.

The aim of this consultation is to obtain your views on our approach to exercising our regulatory responsibilities. We aim to complete this work by the end of 2022. This consultation closes in March 2022.

Timing of the consultation

The ICO is an independent public body and the Department for Digital, Culture, Media and Sport (DCMS) is our sponsoring department within Government. It is the responsibility of Government and Parliament to develop policy and make changes to the legislative framework. Our role is to carry out those duties (both under the current legislative framework and under any future legislative framework). The RAP is the document which sets out our general approach when using the regulatory powers under this framework.

We acknowledge that the government is considering changes to data protection legislation following Brexit and recently conducted a consultation exercise in relation to their proposals. You can read our response to this consultation on our website ([Department for Digital, Culture, Media & Sport consultation: "Data: a new direction" | ICO](#)).

Whilst we welcome the opportunity to reflect on and review the UK data protection legal framework and regulatory regime, we must continue to update our policies when it is both necessary and appropriate. We have updated our RAP and statutory guidance documents to explain as much about our regulatory powers as possible. We want to ensure those we regulate continue to understand what we do and why. The documents reflect the current regulatory landscape and are not time limited. We will review the policy and guidance documents as and when appropriate to reflect any new legislative and regulatory reforms, in particular the outcome of the 'Data: a new direction' reform proposals.

The RAP and the statutory guidance documents

Background

In September 2018, following the implementation of the GDPR and DPA 2018, we published the RAP (RAP 2018). This was a single guidance document which included statutory guidance relevant to the DPA 2018. It set out the Commissioner's risk-based approach to taking regulatory action against organisations or members of the public who breached the legislation we monitor and enforce. We designed the policy to give direction and focus to the organisations we regulate.

We committed to review the RAP 2018 after a year in order to take account of any learnings from the first year of its implementation. With this in mind, we decided to separate the statutory guidance from the RAP and create two documents:

- the RAP (RAP 2021); and
- statutory guidance on our regulatory action (pursuant to our obligations under s160 DPA 2018).

When we implemented the RAP 2018, we retained the preceding statutory guidance ('Information Commissioner's guidance about the issue of monetary penalties prepared and issued under section 55C(1) of the DPA 1998') solely for the purposes of determining penalties under the Privacy and Electronic Communications Regulations 2003 (PECR). We still determine those penalties under the DPA 1998. We updated this guidance, which now also deals with our powers to serve a monetary penalty notice on an officer of a body for data protection failures in respect of the PECR (as well as on a person). This guidance, now called the statutory guidance on our PECR powers (pursuant to our obligations under s55C DPA 1998), replaces the retained statutory guidance 'Information Commissioner's guidance about the issue of monetary penalties prepared and issued under section 55C(1) of the DPA 1998'.

Purpose

The RAP 2021 sets out our general approach when using our regulatory powers under the range of legislation we monitor and enforce (these regimes do not carry a legal obligation for formal guidance). The RAP explains the factors we consider before taking regulatory action. It also puts our work into context by explaining our role, where we fit into the wider regulatory landscape and how we work with other regulators. The RAP sets out how we aim to achieve a key part of our role, which is promoting best practice and ensuring compliance. It details the individual pieces of legislation we have regulatory responsibility for and our specific enforcement powers for each piece of legislation.

The new statutory guidance on our regulatory action focuses on the DPA 2018 and the relevant sections within it which specify our legal obligations to publish guidance (those being s160, s158 and s133).

The updated statutory guidance on our PECR powers sets out our obligations under section 55C of the DPA 1998. This guidance specifically explains our powers in respect of monetary penalty notices on a person or an officer of a body for data protection failures in respect of the PECR. This is a power which has recently been incorporated into law.

Taken together, the RAP, the statutory guidance on our regulatory action and the statutory guidance on our PECR powers set out how we aim to carry out our mission to uphold information rights for the UK public in the digital age.

Audience

The RAP informs both people and organisations (who collect, use, store and share data) about our responsibilities to promote compliance and our powers to monitor and enforce UK information rights legislation.

The statutory guidance on our regulatory action informs the same audience about how we use our **statutory** powers to investigate and enforce UK data protection legislation.

The statutory guidance on our PECR powers informs the same audience about how we use our **statutory** powers to issue monetary penalty notices under the UK's PECR legislation.

The consultation

How to respond to the consultation

We invite responses to this consultation by March 2022. We welcome feedback on the specific questions as set out in the section below. You can respond to these questions using our online survey or alternatively by downloading the Consultation Questions document and sending it to: RAPenquiries@ico.org.uk.

In line with our protocols following the pandemic, our offices remain closed and our staff are working from home. We continue to deliver all our services, but we ask you to bear with us if there is a delay in dealing with your enquiry.

If you require any service adjustments, such as documents in different formats or interpretations or translation services, please contact our helpline on 0303 123 1113 or get in touch via the live chat service on our website. We deal with each request on an individual basis.

We publish a summary of the responses we receive on our website after the consultation ends. We do not publish personal contact details in the summary.

However, please remember not to share any information in your response which you would not be happy for us to make publicly available.

We publish a list of names and organisations who responded to our consultation, unless you ask us not to do so in your response.

If you want us to treat your response as confidential, please explain why. Please ensure you mark it clearly as confidential and consider providing a non-confidential summary so that we can publish the non-confidential aspects of your response within the summary. If we receive an FOI request for your response (following publication of the name of your organisation) before we make any decision on disclosure, we would ask you for your views. Although we cannot guarantee that we would not disclose information in response to an FOI request, [Section 132 of the DPA 2018](#) does provide some protections for the confidentiality of information provided to the Commissioner in the course of their regulatory functions.

For more information about what we do with personal data [see our privacy notice](#).

Please note that we are using the platform Snap Surveys to gather information for this consultation. Any data collected by Snap Surveys for the ICO is stored on UK servers. You can read [Snap Surveys Privacy Policy](#) here or by following the link on our privacy notice page.

Next steps

We will consider all the responses we receive and make any appropriate amendments to the policies. We will then proceed with the publication of the documents. For the Statutory guidance documents that will involve consulting with the Secretary of State ahead of them being laid before Parliament. As the RAP does not require approval from the Secretary of State this will be finalised ready to be published once the Statutory guidance documents are approved.

As the RAP and Statutory guidance on our regulatory action will replace our existing Regulatory Action Policy, and as the Statutory guidance on our PECR powers will replace the Information Commissioner's guidance about the issue of monetary penalties prepared and issued under section 55C(1) of the DPA 1998, we will publish all the documents together (once approved) and retire the existing policies.

Further reading

[Strategic plan](#) [this document will be updated in due course]