

# Recruitment and selection impact assessment summary

**Document purpose:** Impact assessment summary for updated guidance on recruitment and selection.

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## 1. Impact assessment context

This summary impact assessment accompanies draft guidance on recruitment and selection which is out for public consultation during winter 2023/24. This forms part of a wider online resource with topic-specific guidance on employment practices and data protection. To date, we have published a number of products that cover topics including monitoring workers and information about workers' health. The draft guidance on recruitment and selection is one of the latest products.

This document is a high-level outline of the context and potential impacts of the draft guidance on recruitment and selection, which we have considered so far. The ICO has an '[Impact Assessment Framework](#)' which outlines our process and sets out when we do and don't carry out impact assessments (IAs). The assessment follows best practice including, but not limited to, [HM Treasury's Green Book](#).

Our initial findings are summarised in Table 1 and the initial theory of change is provided in Figure 1 below. It is important to note that we do not intend for this summary to provide an exhaustive assessment of impacts. It is just an initial overview of considerations.

We are developing this work further into a more detailed impact assessment as we move towards publication of the guidance. We are seeking feedback on this draft summary impact assessment, as well as any other insights stakeholders can provide on impacts through our consultation.

### Key terms

In line with the guidance itself:

- The terms 'recruitment', 'recruitment process' and 'recruitment and selection' are used throughout this guidance to refer to the process of identifying, selecting, verifying, and vetting candidates.
- The term 'candidate' is used throughout this guidance to refer to a person who has either applied for work or has been identified through a selection process or talent search.
- The term 'recruiter' is used throughout this guidance to refer to a recruitment agency, head-hunter or consultancy, other than the employer itself, which is involved in the headhunting, recruitment and selection of candidates.

## 2. Summary of impact assessment steps

The Impact Assessment Framework sets out six steps in the IA process: problem definition; rationale; identification of alternatives; description of regulatory proposal; analysis of cost and benefits; and setting out the proposed monitoring and evaluation needs. The table below summarises our findings with respect to each of these steps in the context of the recruitment and selection guidance.

Table 1: Impact assessment summary

IA Step	Summary
<b>1: Problem definition</b>	<p>As set out in the draft guidance, employers or recruiters are likely to process information for the purpose of recruitment and selection about candidates, prospective candidates, temporary workers, contractors, referees, emergency contacts, and dependants. Some of this information may be sensitive and include, for example, details about health, diversity, or criminal convictions.</p> <p>The ICO's current employment practices code<sup>1</sup>, which covers recruitment and selection, was drafted in 2011. Since then, the world of work has changed considerably, including the way organisations recruit and select candidates. Technology, employment relationships, data protection law and the COVID-19 pandemic have impacted the recruitment and selection processes. Given the significant costs faced by organisations in recruitment and selection, there is an incentive to take up technology that reduces costs or burdens.</p> <p>Not having up to date guidance can make it more difficult for organisations to comply effectively. They may be seeking costly</p>

<sup>1</sup> ICO (2011) *Employment practices code*. No longer publicly available.

	<p>legal advice to fill this gap, taking unnecessary risks where there is uncertainty or holding back on certain activities where they are unsure of how to ensure they are compliant.</p> <p>Outdated guidance also puts people at greater risk of data protection harms.<sup>2</sup> The severity of these harms is heightened by the link between employment opportunities and recruitment and selection. This is due to the importance of access to employment opportunities for candidate's financial and emotional wellbeing. Where competition for roles is high, there is a power imbalance which gives candidates less incentive to reject non-compliant practices.</p>
<p><b>2: Rationale for intervention</b></p>	<p>The heightened risk of data protection harms presents a market failure in the form of potential negative externalities.</p> <p>Data protection harms, particularly where the risk is widespread, have the potential to lead to knock-on negative impacts for wider society. This includes the costs to society in addressing harms to individuals and loss of trust in the recruitment and selection process. One example of a negative externality that could occur during recruitment and selection is the heightened risk of discrimination and bias from the widespread use of AI in recruitment and selection processes. Algorithms used in the process can have in-built biases which can lead to unintentional discrimination against candidates.<sup>3 4</sup></p> <p>The rapid technological change, such as the increasing use of AI in recruitment processes, and guidance that pre-dates the technological change could lead to regulatory uncertainty amongst both organisations and candidates.<sup>5</sup> This can result in an information failure, specifically information asymmetry, where one party has access to disproportionately more information than another. Where candidates are not fully aware</p>

<sup>2</sup> ICO (2022) *Overview of Data Protection Harms and the ICO's Taxonomy*. Available at: <https://ico.org.uk/about-the-ico/research-reports-impact-and-evaluation/research-and-reports/data-protection-harms/> (Accessed: 29 November 2023).

<sup>3</sup> Reuters (2018) *Insight - Amazon scraps secret AI recruiting tool that showed bias against women*. Available at: <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G/> (Accessed: 29 November 2023).

<sup>4</sup> Cambridge University (2022) *Does AI Debias Recruitment? Race, Gender, and AI's "Eradication of Difference"*. Available at: <https://link.springer.com/article/10.1007/s13347-022-00543-1> (Accessed: 29 November 2023).

<sup>5</sup> BBC (2021) *The computers rejecting your job application*. Available at: <https://www.bbc.co.uk/news/business-55932977> (Accessed 29 November 2023).

	<p>of how their personal data is collected and used by organisations during the recruitment process, they may not be able to make an informed decision about whether and how much personal data to share.</p> <p>As the data protection regulator, the ICO is uniquely placed to address these market failures. The ICO also produced the original guidance, so it is well-placed to update it. Without intervention, the market failures and risks to organisations, candidates and wider society will continue to persist.</p> <p>The ICO’s strategic plan (ICO25<sup>6</sup>), commits to “Produce proportionate and transparent guidance to provide regulatory certainty”. Given the market failures outlined, there is an opportunity to both reduce data protection harms and support compliant organisations to become more efficient, effective and competitive through reduced compliance costs and increased regulatory certainty.</p>
<p><b>3: Options appraisal</b></p>	<p>In the interests of proportionality, the options considered have been condensed into four options that provide a good sense of the implications of alternative approaches and demonstrate why the ICO is proposing the preferred option. This follows government guidance on policy development and appraisal. The options are as follows:</p> <ul style="list-style-type: none"> <li>• <b>Option 1 - Do nothing:</b> do not provide any additional guidance and do not update the current guidance;</li> <li>• <b>Option 2 - Do less:</b> make updates to the ICO’s existing employment practices code;<sup>7</sup></li> <li>• <b>Option 3 - Preferred option:</b> produce a new suite of complementary but standalone guidance products that replace the employment practices code and publish them as and when they are ready; and</li> <li>• <b>Option 4 - Do more:</b> replace the existing code with a new single guidance product that covers all the necessary areas.</li> </ul> <p>These options were appraised against critical success factors such as achievability, cost and impact. Option 3 was identified as the preferred option.</p>

<sup>6</sup> ICO (2023) *ICO25 strategic plan*. Available at: <https://ico.org.uk/about-the-ico/our-information/our-strategies-and-plans/ico25-strategic-plan/> (Accessed: 27 November 2023).

<sup>7</sup> ICO (2011) *Employment practices code*. No longer publicly available.

**4: Detail of proposed intervention**

The draft guidance is intended to replace the “Recruitment and selection” chapter of the DPA98 employment practices code.<sup>8</sup> The draft guidance has up-to-date information and advice that is more relevant to modern recruitment and selection practices.

The guidance is aimed at employers and organisations which carry out recruitment on behalf of employers, such as recruitment agencies, head-hunters or consultancies. It covers recruitment in the context of all potential employment relationships, including employees, contractors, volunteers or gig and platform workers.

The guidance covers all aspects of the recruitment and selection process from advertising vacancies through to deleting information about candidates. It has two main parts:

- The first section, Data protection and recruitment, is an overview of how data protection law applies to processing candidates’ information for recruitment purposes. It looks at the data protection principles and the basics for compliance.
- The rest of the guidance focuses on the specifics of the recruitment process in which employers and intermediaries process candidates’ information. It looks at what the law requires you to do and provides good practice advice.

The guidance aims to:

- help provide greater regulatory certainty;
- protect candidates’ data protection rights; and
- help employers and recruiters carry out effective recruitment exercises in compliance with data protection law.

**5: Cost-benefit analysis**

The costs and benefits of the intervention have been identified, as far as is possible and proportionate. Below is a summary of some of the costs and benefits we have considered. This should not be viewed as exhaustive or hierarchical.

	Benefits	Costs
<b>Organisations</b> (including employers)	<ul style="list-style-type: none"> <li>• Greater degree of regulatory certainty.</li> </ul>	<ul style="list-style-type: none"> <li>• Initial familiarisation costs with the new guidance. For the</li> </ul>

<sup>8</sup> ICO (2011) *Employment practices code*. No longer publicly available.

	<p>and intermediaries such as recruiters)</p>	<ul style="list-style-type: none"> <li>• Reduced legal risk and risk of regulatory action from the ICO where compliance improves.</li> <li>• Improved data protection compliance could lead to increased consumer trust and associated revenue and other benefits.</li> </ul>	<p>draft guidance, we indicatively estimate this to be approximately £145 per organisation.<sup>9</sup></p>
	<p><b>People</b> (including candidates and other people affected by the process such as emergency contacts or dependants)</p>	<ul style="list-style-type: none"> <li>• Reduced risk of data protection harm.</li> <li>• Ability to exercise data protection rights such as right of access or right to erasure.</li> <li>• Ability to exercise non data protection rights such as the use of personal data to support a legal process.</li> <li>• Easier access to their personal data.</li> </ul>	
	<p><b>ICO</b></p>	<ul style="list-style-type: none"> <li>• Increased compliance allows the ICO to focus more of its resources on other data protection risks.</li> <li>• Reputational benefits if the guidance is received favourably.</li> </ul>	<ul style="list-style-type: none"> <li>• Reputational risk if the guidance is not received favourably.</li> <li>• Costs of development, awareness and maintenance of the guidance.</li> </ul>
	<p><b>Wider society</b> (including the wider population and other organisations in the supply chain)</p>	<ul style="list-style-type: none"> <li>• Reduction in harms could improve overall societal welfare and reduce costs to society in supporting victims of harm.</li> </ul>	<ul style="list-style-type: none"> <li>• Other organisations such as suppliers of HR software may also need to familiarise themselves with the new guidance.</li> </ul>
<p>Overall our provisional assessment suggests that the benefits outweigh any potential costs of the draft guidance.</p>			
<p><b>6: Monitoring and review</b></p>	<p>In line with organisational standards, when the guidance is finalised, we will put in place an appropriate and proportionate review structure. This will follow best practice and align with</p>		

<sup>9</sup> This is an indicative figure. The analysis will be expanded upon for future iterations. See Annex A of our previous [impact assessment on the employee monitoring guidance](#) for more detail on how this analysis is typically produced.

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	our organisational reporting and measurement against ICO25 objectives.
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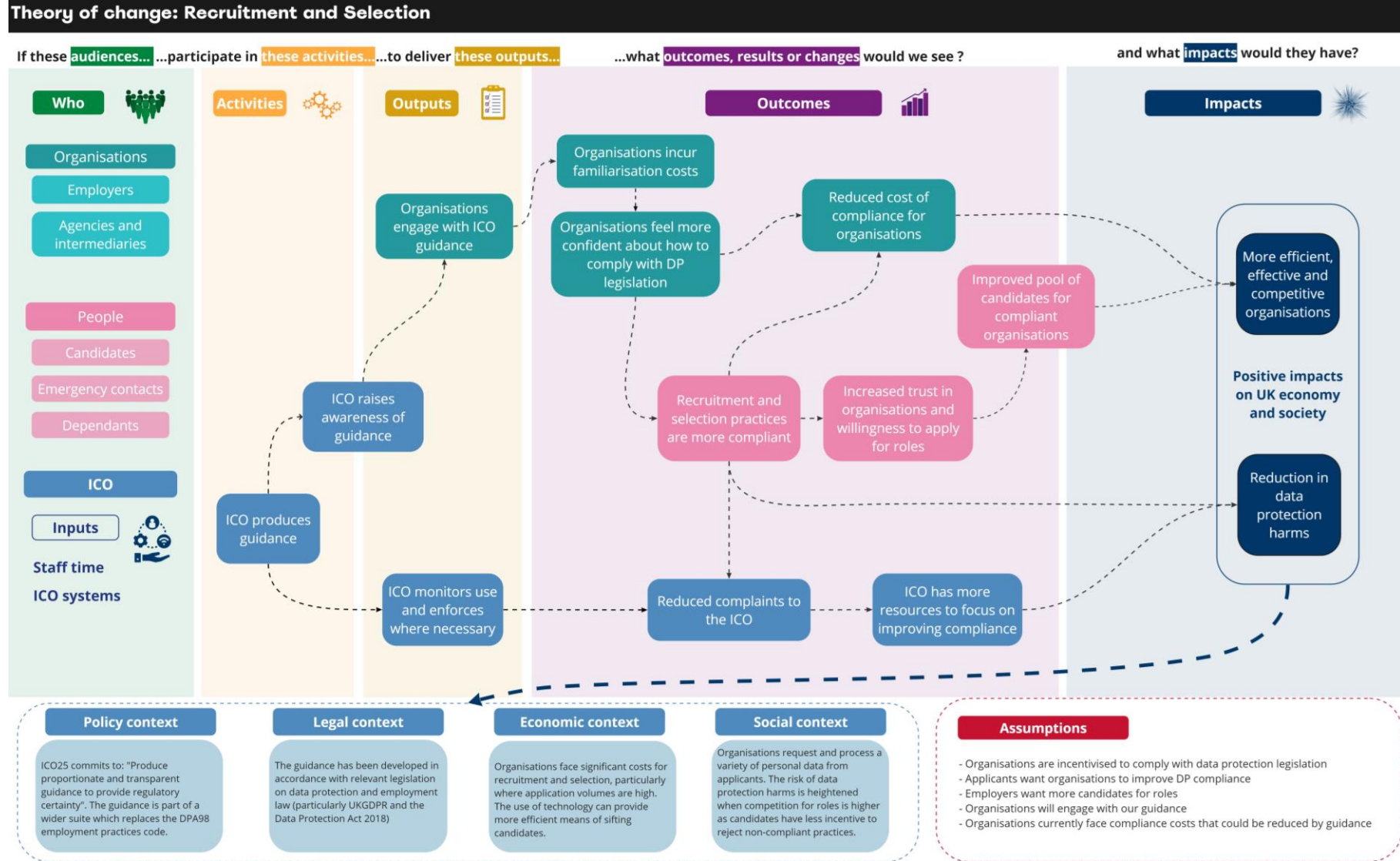
### 3. A theory of change for our draft recruitment and selection guidance

Figure 1 below illustrates our theory of change for the draft recruitment and selection guidance.

A theory of change is a systematic approach used in intervention design and evaluation that provides a visual or narrative representation of how and why an intervention is expected to work. It outlines the causal pathways and linkages between inputs, activities, outputs, outcomes and impacts. Impact, is often the most difficult to measure since it will occur over a longer period of time and be influenced by other factors. The theory of change is useful in that it outlines intermediate steps that can be monitored to provide some confidence that the later stage impacts will occur.

This theory of change was developed in collaboration with the project delivery team and is intended as a visual representation of the causal pathways for the benefits and costs considered in Table 1. We consider the activities carried out by the ICO, organisations and people. The activities consist mainly of the production of the guidance and awareness raising. We then consider how immediate, intermediate and long-term outcomes such as behaviour change amongst organisations and candidates, contribute to the intended impacts of reducing harms and supporting organisations.

Figure 1: Recruitment and selection theory of change



Source: ICO Economic Analysis



