

Statutory direct marketing code of practice

Department for Culture, Media and Sport

RPC rating: validated

The IA is now fit for purpose as a result of the Department's response to the RPC's initial review. As first submitted, the IA was not fit for purpose.

Description of proposal

The proposal will place on to a statutory footing the existing 'Direct Marketing Guidance' produced by the Information Commissioner's Office (ICO). The current guidance provides advice on the direct marketing rules to support businesses in complying with the Data Protection Act and the Privacy and Electronic Communications Regulations.

The intention is that making the code statutory would reduce the likelihood of businesses, and voluntary and community bodies re-interpreting the guidance in a manner that is considered inconsistent with the underlying regulatory requirements. The Department expects the only material effect to be in relation to clarifying some rules around consent to be contacted in relation to pre-selected options on websites.

Impacts of proposal

The Department estimates that around half of direct marketing companies currently follow the ICO guidance. This is based on evidence from the Direct Marketing Association (DMA), as compliance with the guidance is a requirement of DMA membership. On this basis, around 1,000 businesses may not comply fully with the ICO guidance.

Businesses that do not currently comply with the guidance are expected to experience costs associated with familiarisation, minor changes to websites and other costs associated with aligning practice where there are perceptions of legal uncertainty. The Department estimates that familiarisation will take two hours of administrative time, at a cost of £24 for each company (including non-wage labour uplifts). This is expected to result in a total one-off cost of £24,000. Changes to websites, to change pre-selected boxes, are expected to result in negligible costs. The IA states that these figures have been supported by those responding to consultation. The costs of resolving legal uncertainty, and changes to the length of time for which consent can be considered valid, have not been monetised, and are

discussed below. As the costs relate to resolving legal uncertainty, rather than correcting non-compliance, they are considered as qualifying effects for the purposes of the business impact target.

The RPC verifies the estimated equivalent annual net direct cost to business (EANDCB) of zero, when rounded to the nearest £100,000. The proposal is a qualifying regulatory provision that will be reported under the business impact target.

Quality of submission

As initially submitted, the RPC did not consider the IA fit for purpose. The revised IA submitted by the Department includes information sufficient to support the estimated EANDCB of zero when reported to the nearest £100,000. There are some issues affecting the quality of the IA. However, it is reasonable to expect these not to have a material impact on the EANDCB.

Following the Department's response to the RPC's initial review, the IA now explicitly states that the current guidance does not go beyond the existing legislative requirements. The IA does, however, recognise that some businesses might currently be affected by 'legal uncertainty' regarding the definition of 'for the time being' in relation to third party consent. For some businesses, codifying the ICO's legal interpretation of this to mean up to six months may have some costs, for example those businesses that have contact databases including 'out of date' consents, or businesses engaged in selling contact details.

The IA states that it is not possible to monetise these costs, as there is no data available on the number of businesses currently using 'out of date' consent in relation to direct marketing calls. The IA, however, should describe the extent to which the Department has sought evidence from businesses that may be using such consent, for example by seeking to engage beyond the members of the DMA, as these are the businesses most likely to face such costs.

This concern is consistent with the points raised in the RPC's recent opinion in relation to caller line identification. As with that case, the IA would have benefitted from exploring evidence from a greater range of sources. Because the DMA represents businesses that are likely to already be compliant with the ICO guidance, it would have been useful to have an additional data source to further confirm that the estimates are representative of the industry as a whole. However, as the proposal is expected to have a limited effect, the Department's approach can be considered proportionate in this case.

The IA now also correctly reflects that all direct marketing businesses will be in scope of the proposal, even though it is only the 1,000 businesses that are not

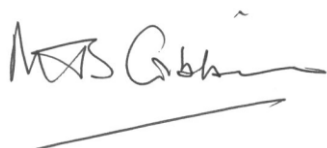
currently complying with the ICO guidance that may face additional transitional or familiarisation costs.

Departmental assessment

Classification	Qualifying regulatory provision (IN)
Equivalent annual net cost to business (EANCB)	Zero
Business net present value	Zero
Societal net present value	Zero

RPC assessment

Classification	Qualifying regulatory provision (IN)
EANCB – RPC validated ¹	Zero
Business Impact Target (BIT) Score ¹	Zero
Small and micro business assessment	Not required (low cost regulation)



Michael Gibbons CBE, Chairman

¹ For reporting purposes, the RPC validates EANCB and BIT score figures to the nearest £100,000.